United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

JOINT APPENDIX.

334

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 21,685.

UNITED FEDERATION OF POSTAL CLERKS, AFL-CIO, and
DOUGLAS E. GROETTUM,
Appellants,

vs.

LAWRENCE F. O'BRIEN, Postmaster General
of the United States,
Appellee.

Appeal from a Judgment of the United States District Court for the District of Columbia.

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR 29 1968

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JOINT APPENDIX.

DOCKET ENTRIES.

UNITED STATES DISTRICT COURT
for the District of Columbia.

Civil Action No. 575-67.

Date	Proceedings
1967	
Mar. 10	Complaint, appearance Exhibits A through L Filed.
Mar. 10	Summons, copies (3) and copies (3) of Complaint issued ser. 3-15; US Atty ser. 3-13; Atty Gen ser. 3-14.
May 12	Stipulation extending to and including 6-12-67 time for deft may answer complaint. Filed.
June 13	Stipulation extending time for deft to plead to and including July 12, 1967. (fiat) Jones, J.
July 12	Answer of deft to complaint; c/m 7/12/67; appearance of David G. Bress, U. S. Atty, Joseph M. Hannon, Asst U. S. Atty, Gil Zimmerman, Asst U. S. Atty. Filed.
July 12	Calendared (N) AC/N.
July 21	Motion of deft for summary judgment, in part, and to dismiss, in part; statement; P&A; exhibits # 1 & 2; c/m 7/21/67; M. C. Filed.
Aug. 8	Stipulation extending until 9-7-67 for pltfs to respond to deft's motion for summary judgment. Filed.

Sept. 7 Cross-motion of pltfs for summary judgment; exhibits A thru S; statement; P&A in support of pltfs' motion for summary judgment and in opposition to motion of deft for summary judgment; c/s 9-7-67; M. C. Filed.

Nov. 15 Reply memorandum of defts; c/m 11-15. Filed.

Nov. 16 Motion of deft for summary judgment (in part) and to dismiss (in part) and motion of pltf for summary judgment argued and taken under advisement. (Rep.-Nicholas Sokal) Sirica, J.

Nov. 24 Reply memorandum of pltf; c/m 11-22. Filed.

Nov. 27 Transcript of proceedings; 11-16-67, pgs 1-57 (Rep.: Nicholas Sokal. Court's copy.) Filed.

Nov. 30 Rejoinder of deft to pltf's reply memorandum; c/m 11-30. Filed.

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Jan. 29 Order granting motion of deft for summary judgment against Douglas E. Groettum and dismissing cause as to pltff., United Federation of Postal Clerks, AFL-CIO; (N) Sirica, J.

Feb. 2 Notice of appeal of pltfs. from order of 2-1; deposit by Thatcher $5.00. (copy mailed to Gil Zimmerman) Filed.

Feb. 2 Notice of no stipulation of omission; c/m 2-2. Filed.

Feb. 2 Cost bond on appeal of pltf. in amount of $250.00 with Hartford Accident & Indemnity Co. approved. Filed.

UNITED STATES DISTRICT COURT
For the District of Columbia.

UNITED FEDERATION OF POSTAL CLERKS, AFL-CIO, 817 14th Street, N. W., Washington, D. C. and DOUGLAS E. GROETTUM, 11214 Terrace Road, N. E., Minneapolis, Minnesota 55433, Plaintiffs, vs. LAWRENCE F. O'BRIEN, Postmaster General of the United States, Washington, D. C., Defendant.	Civil Action. No. 575-67.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF.

(Filed March 10, 1967.)

Plaintiffs complain of Defendant and allege:

1. Plaintiffs seek a declaratory judgment determining the statutory rights of annual rate regular Clerks to be employed on a lawfully established basic work week basis with overtime for work performed during a period outside of such regular work week schedules, with abolition of compensatory time off as directed by the laws of the United States; and for injunctive relief requiring compliance with the law as so declared.

2. Plaintiff, United Federation of Postal Clerks, AFL-CIO (hereinafter referred to as the Federation), is a duly constituted association of employees who are employed as Clerks in the United States Post Office Department.

The national offices of the Federation are at 817 14th Street, N. W., Washington, D. C.

3. Plaintiff, Douglas E. Groettum, is a citizen of the United States, being a resident of the State of Minnesota and is a member of the Federation being an annual rate senior regular employee, employed as a Clerk in the U. S. Post Office Department, Minneapolis, Minnesota.

4. Lawrence F. O'Brien is the duly appointed, qualified and acting Postmaster General of the United States Post Office Department and held such position at all times pertinent to the allegations stated herein.

5. This Court has jurisdiction under Sections 2201 and 2202 of Title 28 of the United States Code.

6. The sections of the laws of the United States pertaining to the Postal Service and pertinent hereto are as follows:

Section 3571, Title 39 USC: Maximum Hours of Work.

(a) A basic workweek is established for all postal field service employees consisting of five eight-hour days. The work schedule of employees shall be regulated so that the eight hours of service does not extend over a longer period than ten consecutive hours.

(b) The Postmaster General shall establish work schedules in advance for annual rate regular employees consisting of five eight-hour days in each week.

(c) Except for emergencies as determined by the Postmaster General, the hours of service of any employee shall not extend over a longer period than twelve consecutive hours, and no employee may be required to work more than twelve hours in one day.

(d) To the maximum extent practicable, senior regular employees shall be assigned to a basic work-

week Monday through Friday, inclusive, except for those who express a preference for another basic workweek. (As amended Public Law 89-301, Sec. 5 (a), Oct. 29, 1965, 79 Stat. 1114.)

Section 3573, Title 39 USC: Compensatory Time, Overtime, and Holidays.

(a) In emergencies or if the needs of the service require, the Postmaster General may require employees to perform overtime work or to work on holidays. Overtime work is any work officially ordered or approved which is performed by—

(1) an annual rate regular employee in excess of his regular work schedule,

(2) an hourly rate regular employee in excess of eight hours in a day or forty hours in a week, and

(3) a substitute employee in excess of forty hours in a week. The Postmaster General shall determine the day and week used in computing overtime work.

(b) For each hour of overtime work the Postmaster General shall compensate an employee in the "PFS" Schedule as follows:

(1) He shall pay each employee in or below salary level PFS-10 compensation at the rate of 150 per centum of the hourly rate of basic compensation for his level and step computed by dividing the scheduled annual rate of basic compensation by two thousand and eighty.

(2) He shall grant each employee in or above salary level PFS-11 compensatory time equal to the overtime worked, or in his discretion in lieu thereof pay such employee compensation at the rate of 150 per centum of the hourly rate of

basic compensation of the employee or of the hourly rate of the basic compensation for the highest step of salary level PFS-10, whichever is the lesser. (As amended, Pub. L. 89-301, Sec. 5 (b), Oct. 29, 1965, 78 Stat. 1114; Pub. L. 89-504, July 18, 1966, Sec. 404 (d), 80 Stat. 2907.)

* * * * * * *

(h) For the purposes of this section and Section 3571 of this Title—

(1) "Annual rate regular employee" means an employee for whom the Postmaster General has established a regular work schedule consisting of five eight-hour days in accordance with Section 3571 of this Title.

(2) "Hourly rate regular employee" means an employee for whom the Postmaster General has established a regular work schedule consisting of not more than forty hours a week.

(3) "Substitute employee" means an employee for whom the Postmaster General has not established a regular work schedule.

As amended, Pub. L. 89-301, Sec. 5 (b), Oct. 29, 1965, 79 Stat. 1114.

7. The Federation, under Executive Order 10988, is and was at all times material to the complaint, the duly certified organization with exclusive national representation rights for the 265,000 employees of the United States Post Office Department in the clerk craft. Collective bargaining agreements entered into between the Federation and the defendant pertinent to the allegations of this complaint are described, marked as Exhibits and made a part hereof as follows:

Exhibit A—Agreement September 24, 1966-October 31, 1967;

Exhibit B—Agreement July 1, 1964-Oct. 31, 1965 (extended by supplemental agreement where not in conflict with statute);

Exhibit C—Agreement dated January 21, 1966, as to the application of Seniority on a One-Time basis for the implementation of Public Law 89-301, Section 3571 (d);

Exhibit D—Agreement as to Seniority and Bidding procedures Postal Bulletin 20520, March 5, 1966;

Exhibit E—Nov. 4, 1965—Postal Bulletin 20501—abolishing compensatory time and requiring overtime.

8. All regular annual rate employees in the defendant Department, with the Classification of Clerk, are employed within a "Service Week", being a period beginning 12:01 A. M. Saturday and ending at 12:00 midnight on Friday.

9. Prior to October 29, 1965, the date Pub. L. 89-301 was approved, the Postmaster General by statute (39 USC 3573, Pub. L. 86-682 and Pub. L. 87-487) was required to grant annual rate regular employees in or below PFS-7 compensatory time off for work performed on Saturdays or Sundays. Compensatory time meant time off within five working days equal to time worked on a Saturday or Sunday but not to exceed eight hours in any one day. Overtime was paid for hours in excess of 8 hours in any one day.

10. By specific provisions contained in Pub. L. 89-301 (39 USC 3573) approved October 28, 1965, as amended July 18, 1966, the authority to use compensatory time off for employees in or below salary level PFS-10 was abolished and, instead, the Statute specifically required 150 per centum of the hourly rate for overtime work which, when performed by annual rate regular employees, was

defined as any work officially ordered and performed by such employee "in excess of his regular work schedule" (3573 (a) (1)—allegation, paragraph 6, supra).

11. Pursuant to the directive of the statute withdrawing authority for compensatory time (allegation paragraph 10), the Defendant issued its instructions in Postal Bulletin 20501 dated November 4, 1965 (Exh. E), which are still in effect, and are set forth on pages 5 and 6 thereof. Section IV 2 of said Bulletin specially provided that "compensatory time for work performed on Saturdays and Sundays by all regular employees is abolished." The same Bulletin, reflecting the statute, directs the payment of overtime to employees for work "in excess of their regular work schedule."

12. Congress also provided in Pub. L. 89-301 (39 USC 3571) that a "basic workweek" be established consisting of five eight-hour days, that "work schedules" be established in advance and that to the maximum extent practicable senior regular employees be assigned to a basic workweek Monday through Friday except for those who express a preference for another basic workweek.

13. Pursuant to the authority as heretofore set forth in paragraphs 6-12 the Postmaster General and the Federation entered into an agreement "on the application of seniority on a one-time basis for the implementation of Section 3571 (d), Public Law 89-301", set forth in Postal Bulletin 20520, dated March 4, 1966 (Exhibits C and D attached). These procedures required postmasters to determine in advance "the maximum number of regular basic workweek assignments of Monday through Friday (as well as other assignments) and to post for bidding such regular basic workweek assignments, and thereafter to post a notice naming the successful bidders. Successful bidders were required to be then "officially assigned" to the "basic workweek assignments". (Postal Bulletin

20520, Page 2, items 3 and 4, Exh. D.) "One time basis" refers to the procedures as agreed to by the parties, whereby the determination of a workweek to be applicable thereafter would be completed and posted for bidding and assignment.

14. Postmasters throughout the country after March 4, 1966, made such determinations, posted assignments, accepted bids and assigned employees officially to regular basic workweek assignments as required by statute and agreement alleged heretofore. Such Postmasters then proceeded consistently and continuously to the date hereof to arbitrarily ignore such assignments and to follow a practice of requiring successful bidders to work days outside of such established scheduled basic workweeks without overtime pay. Typical of this practice was that of assigning employees who were regularly to be off duty on Saturdays and/or Sundays to work on a given Saturday and/or Sunday and requiring them to take another day or days off as "off duty" days. This practice constitutes a return to the compensatory system which was ended by statute. Frequently, postmasters who wanted Monday through Friday employees to work on Saturday or Sunday would give notice on the preceding Thursday or Wednesday. The Saturday and or Sunday work requirements so made were temporary, for example, lasting for one or two weeks, and thereafter the employee continued his Monday through Friday schedule without Saturday or Sunday work. For such workweeks, the employee was paid only for five days at straight time rates. The reasons given for Saturday work was the need to take the place of a regular Saturday employee who was on vacation leave or absent for "personal emergencies" or for similar reasons relating to ordinary routine, temporary causes.

15. The actions of the postmasters as alleged in paragraph 14 were encouraged, authorized and approved by

the Postmaster General in a release by him set forth in Postal Bulletin 20553, dated September 22, 1966, at page 10, attached hereto as Exhibit F.

16. Douglas E. Groettum is and was, at all times material hereto, employed as an annual rate regular employee with the status of senior regular clerk in the United States Post Office at Minneapolis, Minnesota.

17. In June 1966 W. J. Hogan was the postmaster at Minneapolis, Minnesota, acting as agent of, at the direction of, and with the authority of the defendant Postmaster General.

18. On May 19, 1966, Postmaster Hogan, acting pursuant to the agreement set forth in Postal Bulletin 20520, dated March 4, 1966, attached hereto as Exhibit G, announced that "effective Saturday, May 21, 1966, all employees are assigned to the basic workweek as determined and bid under the implementation of Section 3571 (d), Public Law 89-301 and outlined in the Postal Bulletin 20520, Washington, D. C. March 4, 1966." Plaintiff Groettum, a senior regular annual rate employee, successfully bid for a Monday through Friday assignment and accordingly Postmaster Hogan officially assigned a Monday through Friday regular basic workweek to plaintiff Groettum as of May 19, 1966.

19. On or about June 16, 1966 Postmaster Hogan arbitrarily and capriciously and contrary to the provisions of Pub. L. 89-301 (allegation paragraph 6 of this complaint) and the provisions of the agreement as stated in Postal Bulletin 20520 (Exh. D), ordered plaintiff Groettum to work on Saturday, June 18, and Sunday, June 19, for which he was paid his straight time rate, and to take off two of his regular work days, i. e. Monday, June 20, and Friday, June 24, 1966. The reason given by the Postmaster was that scheduled vacations had resulted in absences of

personnel who regularly worked on Saturdays and Sundays.

20. Groettum appealed the violations as set forth in paragraphs 16-19 above to his postmaster, then to the Regional Director, and finally to the Post Office Department Board of Appeals and Review. His appeal was in each case denied, the denial of the Board of Appeals and Review being dated December 21, 1966, a copy of which is attached hereto as Exhibit H. Groettum has exhausted all administrative review procedures.

21. The President of the plaintiff Federation, E. C. Hallbeck, has protested to the Postmaster General, but the Postmaster General, in a letter to Mr. Hallbeck on August 5, 1966, a copy of which is attached hereto as Exhibit I, and by publication of a directive in Postal Bulletin 20553 on September 22, 1966 (Exh. F), has reiterated his intention to require clerks who have successfully bid and been assigned officially to Monday through Friday or other fixed basic workweeks to work on Saturday, Sunday or other regular days off without overtime compensation and to be forced to stay away from work on one or more of such clerk's regular workdays.

22. The allegations in paragraphs 14 to 21 above, with reference to the arbitrary refusal by the Postmaster General and his subordinates to adhere to a lawfully required, established and officially assigned workweek is typical of similar actions of postmasters throughout the country. These postmasters, acting on the advice and instructions of the Postmaster General, have consistently arbitrarily and unlawfully ignored and failed to enforce the lawfully established and officially assigned workweeks. The practice of requiring regular senior employees as aforesaid to work outside of their regular and established basic workweeks and of requiring compensatory time off necessarily resulted in a failure to pay overtime and a denial of the em-

ployees' right to work their days assigned as constituting official basic workweeks. Unlawful action of a like nature has occurred in scores of post offices since the issuance of Postal Bulletin 20520 on March 4, 1966, and continues to occur and substantially denies and frustrates thousands of employees, whose employment rights are similar to those of the plaintiff Groettum, in the enjoyment of their lawful rights and privileges and overtime pay established by law and agreement. Relief is sought in this action for plaintiff Groettum and all clerks similarly situated for whom the plaintiff Federation is the authorized representative.

23. The actions of the defendant and of those acting under his control and direction, as alleged in the foregoing paragraphs, were arbitrary, capricious and contrary to law in that such actions were contrary to the provisions of Pub. L. 89-301, 5(a) and 5(b) (39 U. S. C. 3571, 3573) and to the Agreement of the parties implementing Pub. L. 89-301 (Exhs. C and D), the Departmental Bulletin of November 4, 1965 (Exh. E), and the terms of the "Agreements" between the Federation and the Department applicable at the times of the violations as alleged.

24. The failure and refusal of the defendant to comply with the law, the regulations and the agreements as aforesaid has resulted in the loss of overtime pay to the members of the plaintiff Federation, to plaintiff Groettum and to all other clerks similarly situated and to the denial to the Postal Clerks of the enjoyment of the rights, privileges and emoluments to which they are entitled as a matter of law. Defendant and his subordinates acting under his direction continue to violate the law as herein alleged. Further appeals will be fruitless and there is no other relief available to plaintiffs and those similarly situated except the relief herein sought. If the prayer of the plaintiffs for relief is not granted the defendant will continue to violate the law as aforesaid and Douglas E.

Groettum and those similarly situated, all represented by the Federation, will suffer irreparable damage.

Wherefore, Plaintiffs pray:

I. That the Court determine as a matter of law that:

(a) In accordance with the provisions of Pub. L. 89-301 relative to "Maximum Hours of Work and Compensatory Time, overtime and holidays (39 U. S. C. 3571, 3573)", and the agreement of the parties set forth in Postal Bulletin 20520, regular, basic workweeks must be determined and assigned to accommodate annual rate regular employees in accordance with the law and procedures which require (among other things) (1) consultation between the Federation and the Department, (2) advance determination of basic workweek assignments, (3) posting of assignments, (4) reception of bids of assignments, (5) application of the Seniority Agreement to determine successful bidders, (6) posting of notice stating the successful bidder and seniority date, (7) official assignment of the successful bidders to their basic workweek assignments as soon as possible and thereafter adherence to such lawfully established work schedules unless changed in accordance with such procedures.

(b) The Postmaster General or his agents may not change basic workweek assignments except in accordance with I(a) of this prayer.

(c) After the establishment of a basic workweek as required by I(a) above an assignment of an employee to work on a day not specified in his basic workweek does not constitute a change in his basic workweek, and such day shall be in excess of the employer's regular work schedule and be paid for at the statutory overtime rate which must be paid in cash and not by compensatory time off.

(d) The Postal Clerks are entitled to be paid the regular compensation for the basic workweek plus pay at the overtime rate for work in excess of the regular work schedule which as to employees similarly situated to plaintiff Groettum would require overtime compensation for Saturday and Sunday.

II. The defendant, his agents, successors and assigns are enjoined and ordered to cease and desist in the practices herein declared to be unlawful, that basic workweeks be determined in accordance with the law as here declared, and as to such basic workweeks the defendant is to comply with the overtime provision of Sec. 39, Title 3573 as amended (Pub. L. 89-301) for work of annual rate employees in excess of their regular work schedule which includes work on a day other than a day assigned as part of an employees' basic workweek.

III. And for such other relief as the Court may deem proper.

s/ HERBERT S. THATCHER,
DONALD M. MURTHA,
1009 Tower Building,
Washington, D. C. 20005,
Counsel for Plaintiffs.

ANSWER.

(Filed July 2, 1967.)

Defendant Postmaster General by his attorney, the United States Attorney, answers the complaint as follows:

1. As for the allegations in paragraph 1 of the complaint: Admits that plaintiff Groettum has standing to maintain suit—individually—for limited judicial review of the complained-of action taken in respect of him by defendant, to determine whether it is in conformance with 39 U. S. C. 3571, as amended; but denies that plaintiff

Groettum may maintain this suit in its present posture in any representative capacity. Denies that plaintiff United Federation of Postal Clerks, AFL-CIO ("Federation"), has any standing to maintain this suit either on its own behalf, or to enforce the (alleged) individual rights of its members.

2-4. Admits the allegations in paragraph 2-4 of the complaint.

5. As for the allegations in paragraph 5 of the complaint: Admits that the Court has jurisdiction on complaint of plaintiff Groettum—in his individual capacity—to conduct limited judicial review, to determine whether the defendant's complained-of action was taken in the exercise of the statutory discretion vested in defendant by 39 U. S. C. 3571(d), as amended, or was arbitrary or capricious. Denies that on the basis of the complaint herein this Court has further jurisdiction over this matter. Incorporates by reference the allegations in paragraph 1 above.

6. As for the allegations contained in paragraph 6 of the complaint: Admits that 39 U. S. C. 3571, as amended, pertains to the Postal Service and is the statutory provision directly involved in this judicial review proceeding. Admits that 39 U. S. C. 3573, as amended, pertains to the Postal Service; but denies that it is materially involved here. Affirmatively avers that 39 U. S. C. 302, 309 and 501 are also relevant to proper disposition by the Court of this judicial review proceeding. Respectfully refers the Court to these statutory provisions for their complete and accurate texts.

7. As for the allegations in paragraph 7 of the complaint: Admits that, pursuant to Executive Order 10988, Federation has been administratively granted recognition at the national level as the exclusive labor organization

representative of the postal clerks for purposes of Post Office Department consultation with them on personnel policies and practices, and working conditions; and that, as such recognized representative, Federation entered into the administrative agreements with the Post Office Department incorporated as Exhibits A-D to the complaint. Admits that the substance of the Postal Bulletin incorporated as Exhibit E to the complaint was made the subject of discussions by the Post Office Department with Federation. Respectfully refers the Court to these Exhibits for their complete and accurate texts.

8. Admits the allegations in paragraph 8 of the complaint.

9. Admits the allegations in paragraph 9 of the complaint, except that the first sentence thereof is denied, to the extent that it may refer to the month of December, when defendant had legal authority to pay either overtime or grant compensatory time.

10-12. Admits the allegations in paragraphs 10-12 of the complaint. Respectfully refers the Court to these statutory and bulletin provisions for their complete and accurate texts. Affirmatively avers that the provisions in Section IV.A.2 of Postal Bulletin 20501 did not intend or mean that overtime would be paid for work performed on Saturday or Sunday within a regular employee's assigned basic workweek.

13. As for the allegations in paragraph 13 of the complaint: Respectfully refers the Court to Exhibits C and D of the complaint for their complete and accurate texts. Affirmatively avers that these "one-time" or "one-shot" procedures were applicable only to the initial putting-into-effect of the provisions of 39 U. S. C. 3571 (d), as amended; and that these "one-time" or "one-shot" procedures were not intended or meant to preclude the sub-

sequent changing or establishing (in advance) of other basic workweek schedules (including weekend work) on a temporary or permanent basis, as service needs at an installation may require. Denies the allegations in paragraph 13, to such extent as they are (or may be) inconsistent with the foregoing affirmative averments.

14. As for the allegations in paragraph 14 of the complaint: Denies that the local postmaster arbitrarily rescheduled defendant Groettum temporarily to a basic workweek (including weekend work) during the week of June 18 through 24, 1966. Affirmatively avers that the certified administrative records pertaining to plaintiff Groettum's grievance appeal under the established internal Post Office Department procedures conclusively disclose that:

(a) Such rescheduling was done in the exercise of statutory discretion to meet service needs at the installation; specifically, scheduled vacations and personal emergencies had so depleted the available postal clerk work force that approximately 2% (two percent) of the postal clerks at the installation (including plaintiff Groettum) "had to be rescheduled [for that workweek] in order to insure adequate staffing of the office."

(b) On the basis of this fact-finding, the Post Office Department's Board of Appeals and Review concluded that, under the particular circumstances, "the rescheduling of approximately 2 percent of the employees" could not be deemed "either excessive or unjustified"; and that the local postmaster had acted within his delegated authority in plaintiff Groettum's case. Accordingly, the Board on December 21, 1966 finally denied plaintiff Groettum's grievance appeal.

Further affirmatively avers that the current established Post Office Department policy governing temporary rescheduling of basic workweeks for regular employees is

as set forth in Exhibit F of the complaint; that plaintiff Federation should properly exhaust its available administrative remedies by consulting with the Post Office Department officials concerned in any instance (other than plaintiff Groettum's) in which it considers this established Post Office Department policy is not being adhered to; and that, where warranted, the delegates of defendant Postmaster General will administratively take appropriate corrective action in any such grievance case.

Denies the allegations in paragraph 14, to the extent that they are inconsistent with the foregoing affirmative averments. Further affirmatively avers that the doctrine of exhaustion of administrative remedies bars plaintiffs from raising in this litigation any allegedly "arbitrary" action on the part of local postmasters under the discretionary authority delegated to them by defendant Postmaster General under 39 U. S. C. 3571, as amended, in respect of which they have not exhausted the available internal Post Office Department grievance procedure.

15-22. As for the allegations in paragraphs 15-22 of the complaint: Incorporates by reference paragraph 14 above. Respectfully refers the Court to the certified administrative records pertaining to plaintiff Groettum's grievance appeal, and to Exhibits G, D, F, I, for their complete and accurate texts. Affirmatively avers that plaintiff Federation has no standing to seek to enforce in this lawsuit the (alleged) individual rights of its members, and that on the basis of the present complaint plaintiff Groettum has no standing to sue in a representative capacity. Denies that the Post Office Department actions complained-of here are unlawful or violate any "rights and privileges * * * established by law and agreement." Affirmatively avers that in any event no litigable rights are conferred by any agreement entered into under Executive Order 10988.

23-24. Denies the allegations contained in paragraphs 23-24 of the complaint. Incorporates by reference paragraphs 14-15 above. Affirmatively avers that the complained-of actions of defendant Postmaster General are in full accord with law, and in no way arbitrary or capricious; and that in no event are plaintiffs entitled to be granted injunctive relief herein.

DAVID G. BRESS,
United States Attorney,
JOSEPH M. HANNON,
Assistant United States Attorney,
GIL ZIMMERMAN,
Assistant United States Attorney.

Certificate of Service.

I Hereby Certify that service of the foregoing Answer has been made upon the plaintiffs by mailing a copy thereof to their attorneys, Herbert S. Thatcher, Esquire and Donald M. Murtha, Esquire, 1009 Tower Building, Washington, D. C. 20005, on this 12th day of July, 1967.

GIL ZIMMERMAN,
Assistant United States Attorney.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (IN PART), AND TO DISMISS (IN PART).

(Filed July 21, 1967.)

Defendant Postmaster General by his attorney, the United States Attorney, moves the Court—

(a) **As for plaintiff Groettum's individual claim**— to grant summary judgment in defendant's favor,

on the ground there are no litigable issues of fact, and defendant is entitled to judgment as a matter of law.

(b) **As for claim of plaintiff United Federation of Postal Clerks, AFL-CIO—**
to dismiss Federation from the case for lack of standing to sue, and for not being any "real party in interest."

(c) **As for plaintiff Groettum's class action claim—**

(i) to dismiss Groettum's class action claim for failure of the individuals involved to exhaust their available administrative remedies in respect of allegedly "arbitrary" action taken under 39 U. S. C. 3571, as amended; alternatively,

(ii) to enter an order under the discretionary authority vested in the Court by Rule 23 (c) (1), F. R. C. P., as amended, directing that this suit not be maintained as a class action, but proceed exclusively on Groettum's individual claim.

Incorporated into and made a part of the motion for summary judgment upon plaintiff Groettum's individual claim are the annexed certified Post Office Department records (marked Government Exhibit 1) relating to the processing and final denial of his individual grievance claim under the internal Post Office Department Grievance Appeal procedure. Also incorporated into and made a part hereof (for all purposes) are the following exhibits, identified as indicated:

Government Exhibit No.	Description
2	(Annexed) affidavit of Assistant Postmaster General Richard J. Murphy executed July 7, 1967 (with 8 attachments)
3 (a) & (b)	(By reference) the "memorandum of understanding" and Postal Bulletin special issue of March 4, 1966 (annexed as Exhibits C & D to the complaint)
4	(By reference) the Minneapolis, Minnesota Post Office Bulletin issue of May 19, 1966 (annexed as Exhibit G to the complaint).

In support hereof, a statement of material facts and a memorandum of points and authorities are submitted.

/s/ DAVID G. BRESS,
United States Attorney,

/s/ JOSEPH M. HANNON,
Assistant United States Attorney,

/s/ GIL ZIMMERMAN,
Assistant United States Attorney.

Certificate of Service.

I Hereby Certify that service of the foregoing Motion for Summary Judgment (in part), and to Dismiss (in part), together with supporting memorandum of points and authorities, statement of material facts and Government Exhibits 1 and 2, has been made upon plaintiffs by mailing a copy thereof to their attorneys, Herbert S. Thatcher, Esq., and Donald M. Murtha, Esq., 1009 Tower

Building, Washington, D. C. 20005, on this 21st day of July, 1967.

/s/ GIL ZIMMERMAN,
Assistant United States Attorney.

PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT.

(Filed September 7, 1967.)

Plaintiffs, through their attorneys oppose the motion of the defendant for summary judgment and to dismiss and moves the Court to grant summary judgment in plaintiffs' favor on the ground that there are no material issues of fact and that plaintiffs are entitled to judgment as a matter of law.

Plaintiffs based their motion upon the pleadings in this case and the attached affidavits and exhibits which are identified as follows:

Exhibits:

A. Agreement Sept. 24, 1966-Oct. 31, 1967.

B. Agreement July 1, 1964-Oct. 31, 1965 (extended by supplemental agreement where not in conflict with statute).

C. Agreement dated Jan. 21, 1966, as to the application of Seniority on a One-time basis for the implementation of Public Law 89-301, Section 3571 (d).

D. Agreement as to Seniority and Bidding procedures Postal Bulletin 20520, March 5, 1966.

E. Nov. 4, 1965—Postal Bulletin 20501—abolishing compensatory time and requiring overtime.

F. Postal Bulletin 20553—Sept. 22, 1966.

G. Minneapolis Postal Bulletin May 19, 1966.

H. Decision of Board of Appeals & Review—Groettum—December 21, 1966.

I. Letter of Postmaster General to E. C. Hallbeck—Aug. 5, 1966.

J. Affidavit of Douglas E. Groettum.

K. Affidavit of E. C. Hallbeck.

L. Executive Order 10988.

M. Bulletin No. 1480—Dept. of Labor.

N. Bulletin No. 1251—Dept. of Labor.

O. Hearings—Senate Com. P. O. and C. S., 89th Cong., 1st Sess. Aug.-Oct., 1965.

P. Hearings—House Com. P. O. and C. S., 89th Cong., 1st Sess. June, 1965.

Q. Report No. 792, 89th Cong., 1st Sess.

R. Senate Rep. No. 910, 89th Cong., 1st Sess.

S. Cal. No. 896, H. R. 10281—89th Cong., 1st Sess.

Plaintiffs' Exhibits A-I are attached to the Complaint, but for the Court's convenience duplicates are herewith included together with Plaintiffs' Exhibits J-S in the attached folder marked "Plaintiffs' Exhibits".

In support hereof, a statement of material facts and a memorandum of points and authorities are submitted.

s/ HERBERT S. THATCHER,
DON M. MURTHA,
1009 Tower Building,
Washington, D. C. 20005,
Attorneys for Plaintiffs.

EXCERPTS FROM PLAINTIFF'S EXHIBIT A.

(Insigne) AGREEMENT BETWEEN
UNITED STATES
POST OFFICE DEPARTMENT
AND

(Insigne) National Association of Letter Carriers AFL-CIO

(Insigne) National Association of Post Office and General Services Maintenance Employees

(Insigne) National Association of Post Office Mail Handlers, Watchmen, Messengers and Group Leaders, AFL-CIO

(Insigne) National Association of Special Delivery Messengers AFL-CIO

(Insigne) National Federation of Post Office Motor Vehicle Employees AFL-CIO

(Insigne) National Rural Letter Carriers Association

(Insigne) United Federation of Postal Clerks AFL-CIO

September 24, 1966 October 31, 1967

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Article III.

Management Rights.

In compliance with Sec. 7 of Executive Order 10988:

1. In the administration of all matters covered by the Agreement, officials and employees are governed by the provisions of any existing or future laws and regulations, including, policies set forth in the Federal Personnel Manual and Post Office Department regulations, which may be applicable, and the Agreement shall at all times be applied subject to such laws,

regulations and policies, except as provided in Article XXVI, entitled Postal Manual Conflict.

2. Management officials of the Post Office Department retain the right, in accordance with applicable laws and regulations and this Agreement (a) to direct employees of the Department, (b) to hire, promote, transfer, assign, and retain employees in positions within the Department, and to suspend, demote, discharge, or take other disciplinary action against employees, (c) to relieve employees from duty because of lack of work or for other legitimate reasons, (d) to maintain the efficiency of the Government operations entrusted to them, (e) to determine the methods, means and personnel by which such operations are to be conducted, and (f) to take whatever actions may be necessary to carry out the mission of the Department in situations of emergency, i. e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

3. It is a prerogative of management to determine the complement of an installation, and to establish duty assignments. When complement and duty assignments has been established, by management, employees will be placed in such duty assignments pursuant to the provisions of the National or local agreements as limited by law or regulation.

Article IV.

Organizations' Rights.

A. Scope of Negotiations.

1. In exercising authority to make rules and regulations relating to personnel policies and practices and working conditions, the Department shall have due

regard for the obligation imposed by this Article, but such obligation shall not be construed to extend to such areas of discretion and policy as the mission of the Department, its budget, its organization and the assignment of its personnel, or the technology of performing its work.

2. The organizations may negotiate in the general area of working conditions, personnel policies and practices. As a general rule, negotiable matters must be within the administrative discretion of the Postmaster General, be permissible by applicable laws, Executive Orders, Civil Service Commission and other applicable non-Post Office Department regulations. The organizations have a right to negotiate or consult as appropriate regarding changes in regulations or policy affecting personnel policies, practices and working conditions.

3. Both parties, when formulating proposals or counter-proposals, shall consider that they may not negotiate provisions that are in conflict with:

a. Law.

b. Regulations of the Civil Service Commission and the Department of Labor.

c. Matters not within the administrative discretion of the agency.

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Article XV.

Work Schedules, Overtime, and Holiday Pay.

A. Annual Rate Employees.

The following provisions shall apply to regular annual rate employees represented by the Organizations except those assigned to road duty and rural carriers:

1. Definitions:

a. Service Week. Period beginning 12:01 a. m. Saturday and ending 12 midnight on Friday.

b. Service Day. Calendar day on which the majority of work is performed. Where work is distributed evenly over two calendar days, the service day is the calendar day on which work begins.

c. Basic Work Week. A basic work week is five eight-hour service days, the eight hours to be within 10 hours or less during the service week for which a work schedule has been established. The following types of basic work weeks are recognized for use in postal field installations:

(1.) Fixed work days. Any five eight-hour days in the service week on a recurring basis, however, to the maximum extent possible these five days shall be consecutive.

(2.) Rotating work cycle. Any five eight-hour days in the service week but with changing work day(s) on a regular cycle. For example, first week Saturday and Sunday off, second week Sunday and Monday off, etc.

(3.) Periodic work cycle. Any five eight-hour days in the service week but with changing work day(s) on a regularly recurring basis, for example, on duty every fourth Saturday in lieu of a regular scheduled work day(s).

(4.) Relief work cycles. Work schedules posted to match schedule(s) of the assignments of the employees relieved. These cycles may provide for either fixed or rotating work cycles.

(5.) Flexible relief work cycles (Pool Operations). Normal work schedule (fixed or rotating) of 5 days each week but subject to change of hours when notified in advance of reporting.

d. Work Schedule. A regularly scheduled tour of specific hours for each scheduled service day within an established basic work week.

2. Work Schedules:

a. In the interest of economy and efficiency the head of each installation shall establish a basic work week when there is 8 hours of work to be performed on each of 5 days within a service week. Whenever practicable without detriment to the service arrangement work schedules so that the hours of service are performed within a period of 10 hours or less including at least 30 minutes for rest or lunch break.

b. A work schedule on a service day within the basic work week shall not be for less than 8 hours.

c. The installation head shall at all times maintain the maximum number of Monday through Friday basic work weeks in his installation as far as practicable. Where other fixed work day schedules are established provide, whenever practicable, for 2 consecutive days off, for example: work, Saturday; off, Sunday, Monday; work, Tuesday, Wednesday, Thursday, Friday.

d. The assignment of annual rate regular employees to a basic work week which includes Sunday as a scheduled work day shall be kept to a minimum.

e. After the above provisions have been complied with, the selection, design, and application of the remaining basic work week assignments as defined in A.1.c. shall continue in effect in accordance with established past practice unless changed pursuant to local negotiation or consultation as appropriate.

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F. Overtime.

1. In emergencies or as the needs of the service require, employees may be required to perform overtime work or to work on holidays.

2. Overtime shall be paid to all employees in accordance with the requirements of law.

3. Overtime work shall be only for the specific period of time necessary, it being understood that except for the preceding provisions relating to employment on a holiday, on a scheduled non-work day or call back time there is no minimum guaranteed period of employment on overtime.

4. Employees shall be given as much advance notice as possible of overtime. When an employee has been directed to work overtime, the supervisor ordering the overtime shall specify the minimum period of overtime to be performed by the employee. Although the minimum shall be specified, this does not preclude the performance of additional overtime as directed by a supervisor.

5. In administering overtime within a craft, a cardinal principle will be that overtime should be granted on the basis of need—when it is needed, where it is needed, how it is needed and the skills required. When scheduling overtime all qualified employees within the appropriate craft shall be given opportunities for overtime on an equitable basis.

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Article XXII.

Posting.

A. Except for rural carrier vacancies, vacant craft duty assignments shall be posted as follows:

1. All vacant or newly established craft duty assignments, except confidential positions as defined in

consultation between the Deputy Assistant Postmaster General, Bureau of Personnel and the Organization involved shall be posted for employees of the craft or crafts eligible to bid within 10 days after a determination has been made the position is not to be reverted. If a vacant duty assignment has not been posted within 30 days, upon request, the installation head or his designee shall consult with the organization concerned.

2. If the vacant assignment is reverted, a notice shall be posted within 10 days advising of the action taken and the reason therefor.

3. In the clerk, motor vehicle, maintenance (custodial), and mail handler crafts, when it is necessary that fixed scheduled day(s) of work in the basic workweek for a craft assignment be permanently changed, the affected assignment(s) shall be reposted.

4. In the letter carrier craft and in the special delivery messenger craft a permanently changed scheduled nonworkday shall be posted. The letter carrier or the special delivery messenger whose fixed scheduled nonworkday was necessarily changed retains his assigned route. The senior eligible letter carrier or special delivery messenger who applies for the changed nonworkday in the craft involved shall be assigned to the new basic schedule without changing from his route. Letter carriers or special delivery messengers eligible to bid are those within the sections as established with the respective craft by local negotiation or consultation as appropriate, which negotiation or consultation shall be for the specific purpose of implementing this subparagraph as it applies to the letter carrier craft and to the special delivery messenger craft. In the absence of such designation of sections by local negotiation or consultation, all regular letter

carriers or regular special delivery messengers may bid for the changed nonworkday within their craft on an installation wide basis.

5. The determination of what constitutes a sufficient change of duties, principal assignment area, or scheme knowledge requirements, to cause the duty assignment to be reposted shall be a subject of negotiation at the local level.

6. No assignment will be posted because of change in starting time unless the change exceeds an hour. Whether to post or not is negotiable at the local level, if it exceeds one hour.

7. An unassigned regular employee may bid on duty assignments posted for bids by employees in his craft. If he does not bid, he may be assigned in any vacant duty assignment for which there was no senior bidder in the same craft and installation. His preference is to be considered if more than one such assignment is available.

8. In the motor vehicle craft, when requested by the local organization having exclusive or formal recognition:

a. All regular motor vehicle operator and tractor-trailer operator assignments in cities where daylight time is observed shall be posted for bids twice each year incident to the time changes.

b. In other cities such assignments shall be posted for bids once each calendar year.

B. Place of Posting.

The notice inviting bids for a craft assignment shall be posted on all official bulletin boards at the installation where the vacancy exists, including stations and branches, as to assure that it comes to the attention of employees

eligible to submit bids. Copies of the notice shall be given to the local exclusive or formal organization(s) for the craft(s) affected. When an absent employee has so requested in writing, stating his mailing address, a copy of any notice inviting bids from his craft shall be mailed to him by the installation head.

1. In the letter carrier, maintenance (custodial), special delivery messenger and mail handler crafts, posting and bidding for preferred duty assignments shall be installation-wide unless the local agreement or established past practices specifically limits bidding to sections defined in compliance with the reassignments agreement, Article XII, Section C.4.a.

2. In the clerk and the motor vehicle crafts, posting and bidding for preferred duty assignments shall be installation-wide, without exception.

C. Length of Posting.

The notice shall remain posted for 10 days, unless a different length for the posting period is established by local agreement or in consultation, as appropriate.

D. Information on Notices.

Information shall be as shown below and shall be specifically stated:

1. The duty assignment by position title and number (e. g. key, standard or individual position).

2. PFS salary level.

3. Scheme knowledge requirements where applicable.

4. Hours of duty (beginning and ending).

5. The principal assignment area (e. g., section and/or location of activity).

6. Qualification standards, including occupational code number when such standards and numbers are available.

7. Physical requirements unusual to the specific assignment.

8. Invitation to employees to submit bids.

9. The fixed or rotating schedule of days of work, as appropriate.

10. If city carrier route is involved the carrier route number shall be designated.

E. Successful Bidder.

1. Within 10 days after the closing date for the posting (including December) the installation head shall post a notice stating the successful bidder and his seniority date.

2. The successful bidder must be placed in the new assignment within 21 days except in the month of December. The local agreement may set a shorter period.

3. When the duty assignment requires scheme knowledge, if the senior bidder is qualified on the essential scheme requirements of the position, assign him in compliance with 2 above. If the senior bidder is not qualified on the essential scheme requirements when the posting period is closed, permanent filling of the preferred assignment shall be deferred until he is qualified on the essential scheme requirements, but not in excess of 90 days. The deferment period shall begin the day notice is posted stating the successful bidder. Immediately after the end of the deferment period, the senior bidder then qualified shall be permanently assigned. During the deferment period, the

assignment normally should be filled by the detail of a qualified employee.

4. Normally the successful bidder shall work the duty assignment as posted.

EXCERPTS FROM PLAINTIFF'S EXHIBIT B.

AGREEMENT BETWEEN
(Insigne) UNITED STATES POST OFFICE DEPARTMENT
and
(Insigne) National Association of Letter Carriers AFL-CIO
(Insigne) National Association of Post Office and General Services Maintenance Employees
(Insigne) National Association of Special Delivery Messengers AFL-CIO
(Insigne) National Federation of Post Office Motor Vehicle Employees AFL-CIO
(Insigne) National Rural Letter Carriers Association
(Insigne) United Federation of Postal Clerks AFL-CIO
July 1, 1964-October 31, 1965

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Article XV.

Compensatory and Duty Assignments.

A. Annual Rate Employees.

The following provisions shall apply to regular annual rate employees represented by the Organizations except those assigned to road duty, rural carriers and Level PFS-2 clerks in third-class post offices:

1. *Work week and hours of duty*

All regular annual rate employees in field installations of the postal service shall be scheduled for duty on the standard work week of Monday through Friday. In the interest of economy and efficiency, assign regulars where there is 8 hours to be performed within 10 hours on a permanent schedule. Wherever practicable, without detriment to the service, arrange schedules so that the hours of service are performed within a period of less than 10 hours, with at least ½ hour for rest or lunch. Wherever possible, the assignment should be established on a 5-day week basis.

2. *Assignment of Weekend Duty:*

a. After the number of assignments needed to meet the service requirements on weekends has been determined by local management, the installation head shall negotiate with local exclusive employee organizations and consult with formal organizations on the procedure for assignment of individuals to be scheduled for necessary weekend duty. Assignments shall be made sufficiently in advance to permit adequate notice to employees and as local work load conditions require. As a minimum employees shall be notified no later than the end of their tours of duty Thursday of the days and hours of weekend duty. Assignments shall be adjusted to meet service needs and shall be displayed on appropriate bulletin boards. Mutual "swapping" agreements may also be negotiated locally.

b. Hours of duty on Saturday and/or Sunday are considered to be duty in excess of the standard schedule days and shall be made up by giving the employee compensatory time as prescribed. Special

provisions for payment of overtime in lieu of compensatory time may be established for the month of December by the Department.

3. *Assignment of Compensatory Time:*

a. Employees shall be notified no later than end of tour of duty on Thursday of their scheduled compensatory time the following week.

b. Earned compensatory time of less than 8 hours that is not carried forward and combined with other service shall be granted on one day within 5 working days; except that, at the request of the employee, the head of the postal installation may grant the earned compensatory time on several days within the 5 working days if service will not be impaired.

c. When at least 8 hours has been accumulated, pursuant to law the employee must be scheduled and granted one full day off of 8 hours on Monday through Friday within 5 working days after the accumulation of the 8 hours. The 8 hours available shall not be used over lesser periods than one full day. The assignment of specific compensatory days off for individuals will be accomplished by local negotiations.

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PLAINTIFF'S EXHIBIT C.

1-21-66

MEMORANDUM OF UNDERSTANDING.

Application of Seniority on a One-Time Basis for the Implementation of Public Law 89-301, Section 3571 (d).

POST OFFICE DEPARTMENT,
By: /s/ RICHARD J. MURPHY,
Assistant Postmaster General,
Bureau of Personnel.

EMPLOYEE ORGANIZATION,
UNITED FEDERATION OF POSTAL CLERKS, AFL-CIO,
By: /s/ E. C. HALLBECK,
E. C. HALLBECK,
President.

Washington, D. C. January 21, 1966.

Application of Seniority on a One-Time Basis for the Implementation of P. L. 89-301, Section 3571 (d).

Policy

1. Seniority shall be defined in the Seniority Supplemental Agreement, POD Publication 53, July 1, 1964, for the United Federation of Postal Clerks, the National Association of Special Delivery Messengers, and the National Association of Post Office Mail Handlers, Watchmen, Messengers, and Group Leaders and as it appears in the Postal Manual for the National Federation of Post Office Motor Vehicle Employees and the National Association of Post Office and General Services Maintenance Employees.

a. Seniority shall be applied in each individual post office in accordance with Postal Manual regulations,

National Agreement, POD Publication 53, July 1, 1964, local agreements, or established past practices, as appropriate. It is agreed that for this purpose local agreements or established past practice that provide for the implementation of seniority on a station or branch and/or section basis may be followed.

b. At installations where postmasters and local organizations have not defined "section" they shall do so after proper consultation in accordance with the procedures in Article XII B.4 a .of the National Agreement.

A section or sections as so defined may be the main post office, the main post office and all branches and stations, a part of or parts of a station or branch, or a part or parts of the main post office or any combination thereof.

Procedures

1. Prior to carrying out 2, 3 and 4 of the following procedures, all scheduled assignments which will be affected by 2, 3 and 4 will be posted for the information of employees.

2. All Monday through Friday assignments will be posted for bid in accordance with the above policy.

3. After the Monday through Friday assignments in 2 above have been determined, all assigmnents Saturday (Sunday-Monday off), Tuesday through Friday will be posted.

4. After the assignments in 3 above have been determined, all remaining rotating and non-rotating work day assignments will be posted.

November 17, 1965.

Mr. Richard J. Murphy
Assistant Postmaster General
Bureau of Personnel
Post Office Department
Washington, D. C.

Attention: Mr. James J. LaPenta, Jr.,
Deputy Assistant Postmaster General

Dear Mr. Murphy:

At a meeting held in the Department on Monday of this week officers of the Federation discussed with Mr. Sullivan, Mr. Swygert, and Mr. Dumas, implementation of Paragraph (d), Section 3571, of Public Law 89-301. After extended discussion it was agreed that the Federation would reduce its proposal to writing and I am attaching herewith duplicate copies of that proposal.

I invite your particular attention to the last paragraph on page 3 of our proposal. I feel very strongly that if instructions were issued to the field which would require Regional approval for any "hybrid" schedules, this section of the Act would present no problems whatever.

Sincerely yours,

.....
President.

Encl.

ECH:jdg

Implementation of Section 3571 (d) of Public Law 89-301.

Section 3571 (d) of Public Law 89-301 provides that

"To the maximum extent practicable, senior regular employees shall be assigned to a basic workweek Mon-

day through Friday, inclusive, except for those who express a preference for another basic workweek."

Monday through Friday workweeks will, of course, be desirable and it is proper "to the maximum extent practicable" such workweeks shall be assigned to "senior regular employees".

Those senior regular employees who "express a preference (choice ?) for another basic workweek" should also have an opportunity to "the maximum extent practicable" to choose such a workweek.

The **method** by which the aforementioned choices can be made is not, unfortunately, spelled out in detail either in the Act or in any existing agreement at the national level, nor is there any known precedent for determining the precise **method** by which such choice can be made.

It should be noted that this section (3571 (d)) limits the area of choice to "a basic workweek Monday through Friday, inclusive, except for those who express a preference for another basic workweek". It **does not** provide or require an unrestricted choice of duties, hours of work, assignments, place of employment, etc.

The United Federation of Postal Clerks operating on the theory that this section only requires that the eligible senior clerks be given one opportunity to exercise the rights contained in this section offers the following proposal as a result of an informal sampling of opinion of our membership—

1. That installation heads be required to determine the maximum number of Monday through Friday basic workweeks as are practicable in their installations;

2. That these Monday through Friday basic workweeks be established by Section, Tour, Crew, Station and Units;

3. That such basic Monday through Friday basic workweeks be made available to an equal number of senior clerks in each Tour, Section, Crew, Unit or Station on the basis of their office-wide seniority as defined in Supplementary Agreement on Seniority Section D.

(a) Where an eligible senior clerk is presently holding a Monday through Friday basic workweek in a Tour, Section, Crew, Unit or Station, he or she shall retain that basic workweek;

(b) All other Monday through Friday basic workweeks which are presently occupied by junior clerks shall be declared vacant and shall be filled by eligible senior clerks in the Tour, Section, Crew, Unit or Station who desire same;

(c) After the Monday through Friday basic workweeks on each Tour, Section, Crew, Unit or Station have been filled by the senior clerks desiring same, resulting vacancies on the Tours, Crews, Sections, Units or Stations shall be filled through the bidding process, such bids to be confined to the present personnel in such Tours, Crews, Units, Sections and Stations.

4. The time table for the foregoing shall be as follows:

A. The determination of the Monday through Friday basic workweeks by local installation heads shall be completed by January 8, 1966.

B. The Monday through Friday basic workweeks thus established shall be made available to the eligible senior clerks during the period January 10 to January 15, 1966.

C. The remaining vacancies caused by the action under B above shall be made available in

accordance with 3.c. during the period January 17 to January 22, 1966.

D. All clerical vacancies occurring thereafter shall be filled in accordance with Article XXII of the National Agreement and the Supplemental Agreement on Seniority.

The legislative history of this section of the Act makes it quite clear that the Congress intended that anything other than a Monday through Friday workweek would be an exception rather than a rule. Only to the extent that it becomes necessary to require regular employes to perform service on Saturday and Sunday should there be any deviation from Monday through Friday workweeks. It is believed that after establishing the maximum Monday through Friday and Saturday through Friday except Sunday and Monday schedules, the problem of satisfying the spirit and letter of Section 3571 (d) will for all practical purposes disappear.

EXCERPTS FROM PLAINTIFF'S EXHIBIT D.

POSTAL BULLETIN

Instructions and Information for Postal Employees

Special Issue

LXXXVII 20520

Washington, D. C. 20260, Friday, March 4, 1966—
Eight Pages

All First-, Second-, and Third-Class Post Offices

Seniority and Bidding Procedures

An agreement has been reached between the Department and employee organizations having exclusive recognition

rights at the national level on the application of seniority on a one-time basis for the implementation of section 3571(d), Public Law 89-301, which states "to the maximum extent practicable, senior regular employees shall be assigned to a basic workweek Monday through Friday, inclusive, except for those who express a preference for another basic workweek." The agreement in its entirety is as follows:

Clerical, Special Delivery, Mail Handler, Motor Vehicle, and Maintenance Crafts

A. Policy

1. Seniority shall be defined in the Seniority Supplemental Agreement, POD Publication 53, July 1, 1964, for the United Federation of Postal Clerks, the National Association of Special Delivery Messengers, and the National Association of Post Office Mail Handlers, Watchmen, Messengers and Group Leaders and as it appears in the Postal Manual for the National Federation of Post Office Motor Vehicle Employees and the National Association of Post Office and General Services Maintenance Employees.

a. Seniority shall be applied in each individual post office in accordance with Postal Manual regulations, National Agreement, POD Publication 53, July 1, 1964, local agreements, or established past practices as appropriate. It is agreed that for this purpose local agreements or established past practice that provide for the implementation of seniority on a station or branch and/or section basis may be followed.

b. At installations where postmasters and local organizations have not defined "section" they shall do so after proper consultation in accordance with the procedures in Article XIIB.4.a. of the National Agreement.

c. A section or sections as so defined may be the main post office, the main post office and all branches and sta-

tions, a part or parts of a station or branch, or a part or parts of the main post office or any combination thereof.

B. **Procedures**

1. Prior to carrying out 2, 3, and 4 of the following procedures, all scheduled assignments which will be affected by 2, 3, and 4 will be posted for the information of employees.

2. All Monday through Friday assignments will be posted for bid in accordance with the above policy.

3. After the Monday through Friday assignments in 2. above have been determined, all assignments Saturday (Sunday-Monday off) Tuesday through Friday will be posted.

4. After the assignments in 3. above have been determined, all remaining rotating and nonrotating work day assignments will be posted.

Establishment and Posting of Basic Workweek Assignments

In order to fully comply with the above agreement in the determination of basic workweek assignments for annual rate regular employees, the needs of the Service must have paramount consideration. The fluctuation of volumes of work between the several days of the week in each station, branch, or section must be taken fully into account, and in the case of mail processing sections, the schedules for distributing mail set forth in section 333.32, Postal Manual, must be strictly complied with. After these considerations have been made, the determination and posting of basic workweek assignments should be accomplished in accordance with the following rules in the order listed:

1. *Consultation*

The National Agreement makes it mandatory that full and complete consultation shall be held at the local level with the organization having exclusive or formal recognition at that level. The organization with national exclusive recognition for the craft, if not recognized exclusively or formally at that level, is entitled to be represented at such consultation. It is the responsibility of the postmaster to assure prior consultation is held in implementing these instructions.

2. *Determination of Basic Workweek Assignments*

a. In the determination of *regular* basic workweek assignments of *five 8-hour days,* it must be kept in mind that there are only three types of basic workweek assignments, and the *five 8-hour days* in each basic workweek assignment must be within the 7-day service week of Saturday through Friday. The three types of basic workweek assignments are: (1) those which begin on Monday and run through Friday, with Saturday and Sunday as fixed days off, (2) those which begin on Saturday with Sunday and Monday as fixed days off, and (3) those which begin either on Saturday (except those in (2) above) or on Sunday with 2 fixed or rotating days off within the service week.

b. Using the guidelines in 2a. above, determine the maximum number of *regular* basic workweek assignments of *five 8-hour days,* by separate crafts, position titles, and salary levels, which are required to maintain efficient operations in each station, branch, or section throughout the 7-day service week of Saturday through Friday.

c. From the total number of *regular* basic workweek assignments of *five 8-hour days* determined in 2b. above, determine the maximum number of regular basic workweek assignments of Monday through Friday, the number which

begin on Saturday with Sunday and Monday as fixed days off, and the number which begin either on Saturday (except those with Sunday and Monday as fixed days off) or on Sunday with 2 fixed or rotating days off during the service week.

d. To determine the maximum number of *regular* basic workweek assignments of Monday through Friday, subtract the total number of regular assignments which begin on Saturday and those which begin on Sunday from the total number of regular basic workweek assignments determined necessary in 2b. above.

e. The number of *regular* basic workweek assignments which include Sunday as a workday must be kept to a minimum consistent with maintaining required mail distribution, delivery, and maintenance schedules. In the determination of basic workweek assignments which include Sunday as a workday, thorough consideration must be given to the utilization of substitute or hourly rate maintenance employees to cover Sunday assignments to the maximum extent possible.

3. *Posting and Bidding*

a. Post for the information of employees all regular assignments which will be affected by 2b., c., and d. above. This information shall be posted for a period of 7 days before any action is taken to post the assignments for bid, and shall remain posted during the entire bidding process. Postmasters are responsible for mailing a notice to, or otherwise notifying all employees who are absent on extended annual leave, sick leave, military leave, or other approved leave so that they will be aware of the assignments which will be affected.

b. In accordance with the Seniority Agreement outlined above and as required by Article XXII of POD Publication 53 and the Postal Manual as appropriate, post the follow-

ing *regular* basic workweek assignments for bid by employees in the same position title and salary level as the assignment posted (for this purpose all employees in salary level PSF-4 in the clerical craft are considered as having the same position title):

Step 1. All *regular* basic workweek assignments of Monday through Friday with Saturday and Sunday as fixed days off.

Step 2. All *regular* basic workweek assignments beginning on Saturday with Sunday and Monday as fixed days off.

Step 3. All other *regular* basic workweek assignments which begin either on Saturday or on Sunday with 2 fixed or rotating days off during the service week.

c. The posting notice shall permit each employee to designate first, second, third, or more choices of assignment. The number of choices an employee may be permitted to designate will depend upon the number of assignments posted for his position title and salary level (except as provided in 3b. for the clerical craft).

4. *Awarding of Assignments*

As soon as possible after the closing date of the posted assignments, the postmaster shall post a notice stating the successful bidder and his seniority date. Successful bidders shall be officially assigned to the basic workweek assignment they have chosen as soon as possible.

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EXCERPTS FROM PLAINTIFFS' EXHIBIT E.

POSTAL BULLETIN

Instructions and Information for Postal Employees

Special Issue

LXXXVI 20501

Washington, D. C. 20260, Thursday, November 4, 1965—
20 Pages

All Postal Installations

Compensation, Scheduling and Pay Rules Under the New Pay Law

Special Note

Installation Heads are advised to note particularly Section VIII, Employee-Management Relations, and comply with the instructions therein concerning consultation and implementation.

* * * * * * *

IV. Manpower Management: Duty Schedules; Workweeks; Overtime; Compensatory Time

A. The provisions of the Federal Employees Salary Act of 1965, as they relate to duty schedules, workweek, compensatory time, overtime, duty performed on Sundays, and duty performed on holidays, require substantial changes in present policies, procedures and practices. This is particularly true for those operations and functions which are normally performed on a six or seven days-per-week basis, such as window service, mail handling, delivery, maintenance, etc. The new provisions of this salary act which require changes to present policies, procedures and practices are as follows:

1. *Basic Workweek and Duty Schedules*

a. A basic workweek consisting of five eight-hour days is established for all annual rate regular postal field service employees. (The present provision of eight hours of service within ten consecutive hours remains in effect.)

b. The hours of service of any employee shall not extend over a longer period than 12 consecutive hours, and no employee may be required or permitted to work more than 12 hours in one day.

c. Work schedules shall be established in advance for each annual rate regular employee consisting of five eight-hour days in each service week.

d. To the maximum extent practicable, senior regular employees shall be assigned to a basic work week Monday through Friday, inclusive, except for those who express a preference for another basic work week.

2. *Compensatory Time*

a. Compensatory time for work performed on Saturdays and Sundays by all regular employees is abolished.

b. Compensatory time for employees in or below level PFS-7 for duty performed on holidays is abolished.

c. Compensatory time will be granted to employees in Level PFS-8 through 14 for work performed in excess of schedule, and for work performed on all holidays except Christmas Day.

3. *Overtime*

a. In emergencies or if the needs of the service require, the Postmaster General may *require* employees to perform overtime work or to work on holidays.

b. Eligible annual rate regular employees in or below Level PFS-7 shall be paid overtime for work in excess of their regular work schedule.

c. Hourly rate regular employees in or below Level PFS-7 shall be paid overtime for actual work in excess of eight hours in a day or 40 hours in a week.

d. Substitute employees shall be paid overtime for all hours actually worked in excess of 40 hours a week.

e. Employees in salary Level PFS-8 through 14 shall be granted compensatory time equal to the overtime worked within 30 working days.

4. *Holidays*

a. Each eligible regular employee in or below salary Level PFS-7 shall be paid extra compensation at the rate of 100 per centum of the hourly rate of his basic compensation for all work performed on a national holiday, or a day designated by Presidential executive order as a holiday, except Christmas Day.

b. For all work performed on Christmas Day, each eligible regular employee (including those in PFS-8 through 14) shall be paid extra compensation of 150 per centum for the hours worked.

c. Each substitute employee shall be paid extra compensation at the rate of 50 per centum of his hourly rate of basic compensation for his level and step for all work performed on Christmas Day.

d. Employees in salary Level PFS-8 through 14 shall be granted compensatory time in an amount equal to the time worked on a holiday within 30 working days thereafter except Christmas Day.

5. *Sundays*

a. Each eligible regular employee (PFS 1 through 14) whose regular work schedule includes an *eight-hour period of service,* any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday, shall be paid extra compensation at the rate of

25 per centum of his hourly rate of basic compensation for *each hour of work* performed during that eight-hour period of service.

b. Substitute employees are not eligible for the 25 per centum extra compensation for work performed on Sundays.

6. *Exceptions*

a. Postmasters, rural carriers, postal inspectors, and employees in salary level PFS-15 and above are not eligible, as provided in the Federal Employees Salary Act of 1965, for either overtime, extra compensation, or compensatory time for any work performed. However, the special pay rules for rural carriers serving heavy duty routes as outlined in 755.411a, Postal Manual, remain unchanged.

b. Neither the Basic Work Week nor the extra compensation provisions for Sunday and holiday work apply to Mobile Unit employees assigned to road duty. The existing special pay rules for road duty employees continue to apply.

B. In order to comply with the new provisions of the Salary Act and to assure that the work force is managed efficiently without working any undue hardships upon the employees or incurring any unnecessary costs, the following policies and procedures are established for the guidance of Field Personnel:

1. *Service Week*

a. A service week of Saturday through Friday is established effective November 6, 1965. The service week will begin at 12:01 a. m. on Saturday and end at 12 midnight on Friday.

b. A service day beginning at 12:01 a. m. and ending at 12 midnight is established for administrative, pay and leave purposes.

2. *Basic Workweek*

a. A basic workweek of five eight-hour days within each service week is established in all installations for all eligible annual rate regular employees.

b. The five eight-hour days in the basic workweek do not necessarily have to be consecutive but they must be within the service week of Saturday through Friday.

c. Any combination of five eight-hour days may comprise the basic workweek. The local requirements will determine the actual days comprising each basic workweek.

d. The number of basic workweeks which include Sunday as a scheduled workday shall be kept to the minimum required by the Sunday workload.

3. *Duty Schedules*

a. The maximum number of basic workweeks of Monday through Friday shall be determined by the head of each installation, and nonexempt annual rate regular employees shall be assigned thereto on a seniority basis under the bidding process. Additional assignments to basic workweeks other than Monday through Friday should be determined, and nonexempt regular employees shall be assigned thereto, under the bidding process.

b. The work schedule of each nonexempt annual rate regular employee shall not extend over a longer period than ten consecutive hours, and the hours of service of any employee shall not extend over a longer period than twelve consecutive hours.

* * * * * * *

6. *General Instructions*

a. Whenever a nonexempt annual rate regular employee is absent on any scheduled day of his basic workweek, including Saturday or Sunday, his absence shall be charged to annual leave, sick leave, leave without pay, or absent without leave as appropriate.

b. Neither the basic workweek nor the extra compensation provisions for Sunday and holiday work are applicable to postmasters, rural carriers, mobile unit road employees, postal inspectors, and employees in PFS-15 and above.

c. The eliminatian of tours of duty of less than eight hours in a day for nonexempt annual rate regular employees may result in an excessive number of employees in some of the smaller post offices. A large number of the smaller post offices are accustomed to closing at noon on Saturday and at noon on one other day during the week. Therefore, it will be necessary that each office where this practice is established take immediate action to utilize the services of all nonexempt annual rate regular employees five eight-hour days in each week with no increase in the amount of substitute work hours.

V. Pay and Benefits Rules

A. *Compensation for Overtime Work*

1. *Regular annual rate employees*

Each regular annual rate employee in PFS-7 and below shall be paid overtime compensation for any work, authorized in advance by the installation head or his designee, which is performed outside his regular schedule of eight hours of service on five designated days of his basic workweek. Such overtime service shall be credited without regard to whether actual work was performed during the regularly scheduled hours of service, if the employee was in a paid leave status. Pay for such authorized overtime service shall be at the rate of 150 percent of the scheduled hourly rate of basic compensation for his step and level.

2. *Hourly rate regular employees*

Hourly rate regular employees in PFS-7 and below shall be paid overtime compensation for any work, au-

thorized in advance by the installation head or his designee, which is performed in excess of eight hours on one day or forty hours in the service week. Whenever more than eight hours of service is performed, on one or more days, the time in excess of eight hours shall be deducted from the total number of hours worked before determining eligibility for overtime compensation for work in excess of forty hours in the service week. For such overtime service each employee shall be paid at the rate of 150 percent of the hourly rate of basic compensation of his scheduled step and level. Paid leave or leave without pay shall not be combined with actual work performed to determine eligibility for overtime compensation.

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VII. Timekeepers Instructions

A. Following are listed the provisions in the new law which affect timecard recordings.

1. The standard workweek for nonexempt employees of Monday through Friday has been abolished. Leave may now be charged for any *scheduled* workday regardless of the day of the week.

2. Compensatory time for employees in PFS level 7 and below has been eliminated. Any unused earned compensatory time shall be granted in pay period No. 24 (November 6 through 19, 1965).

3. Overtime will be paid to annual rate regular employees, level 7 and below, for leave except leave without pay and work in excess of 8 hours in one day and for *service* performed in his regular level of pay on any day outside of his regular schedule. The number of overtime hours will continue to be shown in the overtime block on the Form 1230, Timecard.

4. Compensatory time, except for Christmas Day work, will be granted to PFS level 8 through 14, for time over

8 hours in one day and for *service* performed outside of his regular schedule. There is no change in recording compensatory time on the timecard.

* * * * * * *

6. Overtime for Hourly Rate Regular employees is *service performed* over eight hours in one day and 40 hours in one week. Overtime work in excess of eight hours in one day will be subtracted from the total work hours before extending the overtime hours over 40.

7. Substitutes are entitled to overtime for *service performed* for all work in excess of 40 hours in one week, exclusive of any hours worked in a higher level position.

* * * * * * *

VIII. Employee-Management Relations

A. No changes shall be made as a result of these instructions without prior consultation at the local level with recognized employee organizations. See Article IV, Section D and Article VI, Section E of the National Agreement.

B. *No provisions of local agreements affected by the Act and these implementing instructions should arbitrarily be ruled in conflict.* The affected provisions should be the subject of consultation between the installation head and the employee organization which is a party to the local agreement. If the parties cannot agree, the installation head must nevertheless implement these instructions. His decision may be reviewed at the regional and departmental level under the invalidation procedures if the local exclusive organizations so requests.

C. The Department and national exclusive employee organizations have agreed that because of the complex issues involved in complying with the Act's provision that "to the maximum extent practicable, senior regular employees shall be assigned to a basic workweek Monday

through Friday, inclusive, except for those who express preference for another basic workweek," implementation will be delayed until bidding procedures and seniority are thoroughly discussed. However, in order to comply with those portions of the Act which require immediate implementation such as scheduling annual rate regular employees to basic workweeks of five 8-hour days and other requirements of the law, installation heads will have to make some changes in existing schedules. These changes must only be made after proper consultation and then only on a "detail" basis. *No changes will be considered permanent or binding, but will be subject to bidding procedures as determined at the national level.*

D. Certain provisions of the National Agreement, Article XV, A-1, 2, 3, B; and Article XXII D (i) are in conflict with the Act and these implementing procedures. They are no longer effective as written.

PLAINTIFF'S EXHIBIT F.

Excerpt From Postal Bulletin 20553, September 22, 1966, Page 10.

Work Schedules—Changes

Past practice in postal field installations has been to notify employees of a temporary change in their work schedules the Thursday before the beginning of the new work schedule. Effective with this Postal Bulletin, all instructions regarding the previous Thursday rule are canceled and only the following rule shall apply to **annual rate regular and hourly rate regular employees:**

> Temporary changes in hours and days of work shall not be made unless service needs at an installation preclude adherence to regular work schedules; such temporary changes shall be held to a minimum. Employees shall be given as much advance notice as possible of temporary work schedules, but in no case shall

they be notified later than the end of their tours of duty the preceding Wednesday. If notified after Wednesday, employees required to work outside their regular schedules shall be compensated at the overtime rate if permitted by law. Temporary changes shall be reviewed each week. If a temporary change continues beyond 2 consecutive weeks, the exclusive organization may consult with the installation head to ascertain the reasons and expected duration.— *Bureau of Personnel, 9-22-66.*

EXCERPT FROM PLAINTIFF'S EXHIBIT G.

Post Office Bulletin No. 19, Minneapolis, Minnesota 55401, May 19, 1966.

BASIC WORKWEEK

Effective Saturday, May 21, 1966 all employees are assigned to the basic workweek as determined and bid under the implementation of Section 3571 (d), Public Law 89-301 and outlined in Postal Bulletin 20520, Washington, D. C., March 4, 1966.

PLAINTIFF'S EXHIBIT I.

The Postmaster General
Washington, D. C. 20260
August 5, 1966

Dear Roy:

As I indicated during our meeting July 28, I have given careful and serious consideration to the presentations by you and other Organization representatives concerning the five impasses which developed during national negotiations. I know that decisions on the matters discussed are very important to you, just as they are to the Departmental officials charged with the responsibility of operating the world's largest postal system.

I was particularly impressed with the discussion concerning mediation as a means of attempting to resolve

future impasses in national negotiations. I am convinced the time has arrived in our relations to embark on new waters, uncharted though they may be. It is only fitting that the strongest, most experienced unions in the Federal government and the Department, largest of all civilian agencies, should show the way in employee-management relations as we have done repeatedly since Executive Order 10988 was promulgated. Therefore, it is my decision that not only should we incorporate mediation into the National Agreement as a means of settling impasses in national negotiations, but to make such mediation truly meaningful, the mediator will be empowered to make a report, with any recommendations on unresolved impasses that he deems necessary, privately and confidentially only to the Postmaster General. Mutual consent of the parties will not be necessary for such action by the mediator.

I feel sure you will agree with me that this is an historic step forward, and one that should prove beneficial to both parties in the continuing development of a sound labor relations policy.

Of course, I am sure you understand that to comply with the Executive Order the mediator will make no public statement on the impasses involved, the merits of the parties' positions nor any agreement or lack of agreement of the parties.

I agree with the Organizations' view that such authority granted the mediator should make meetings with the Postmaster General concerning impasses, as we have known them in the past, no longer necessary. My door is always open to you. Furthermore, the parties may submit briefs, documentary evidence and other pertinent material to me with the knowledge that I will consider all submissions in making decisions on the impasses.

On the question of another impasse, that of adding higher level jobs to the list of those filled by senior quali-

fied bidders under the Seniority Supplement, I again was much impressed with your position. However, the benefits and well-being for loyal employees of long service must be weighed against the legitimate concern the Department has in the area of promotions. I am happy to decide that 15 jobs will be added to the list, more than doubling the 13 now included in supplemental agreements covering the Carrier, Clerk, Mail Handler and Special Delivery Messenger crafts. The 15 additional jobs in PFS-4 and PFS-5 are:

SP 2-188	Civil Service Examiner-in-Charge	(Carrier, Clerk, Special Delivery Messenger, Mail Handler (Group Leader))
SP 2-433	Self Service Postal Unit Technician	(clerk)
SP 2-383	Rack Distribution and Dispatch Expediter	(clerk)
SP 2-384	Distribution Review Clerk	(clerk)
SP 2-385	Ramp Clerk, AMF	(clerk)
SP 2-387	Bulk Mail Technician	(clerk)
SP 2-388	Window Services Technician	(clerk)
SP 2-362	Parcel Post Distributor (machine)	(clerk)
SP 2-370	Transit Mail Expediter	(clerk)
IP, (all Regions)	(SP 2-364 pending) Distribution Clerk (machine)	(clerk)
SP 2-346	Procurement, Property and Supply Assistant	(clerk)
SP 2-229	Trip Accounts Clerk	(clerk)
IP, (all Regions)	(SP pending) Group Leader, Label Unit	(mail handler)
SP 1-32	Label Facing Slip Technician	(mail handler)
SP 2-354	Mail Processing Machine Operator	(mail handler)

Two other positions on the list of 24 proposed by the Organizations have not been established. The question of whether they should be added to the list properly should be considered when the positions have been established.

As for the question of adding criteria to the Agreement which would govern future additions to the bid list, I can well understand your position that proposed criteria are too restrictive. It is for this reason I believe our mutual purposes will be better served if, in the future, each new

position is considered on its merits rather than attempt to write criteria that neither party can in good conscience adopt. This is apparent by the fact that two years were spent by the parties following the signing of a memorandum of understanding in 1964 in futile attempts to write criteria acceptable to both parties. Incidentally, I think it should be noted that the memo of understanding was directed to the addition of Level 5 positions; there was no understanding concerning Level 6 positions.

Concerning the impasse on duration of Local Agreements (Article XXV, B) it is my understanding that you objected to the phrase "may be extended" in regards to covering any time between the legal termination date and the close of local negotiations. It is my decision that local agreements and supplements will be extended to the close of any period of local negotiations determined by the parties to the National Agreement at which time they will terminate.

The impasse concerning temporary changes in basic work schedules is a perplexing one. On the one hand, we have the understandable and legitimate desires of employees to have an established, never-changing schedule; on the other hand the Department must perform its primary purpose—moving the mail—as efficiently as possible within the budgetary and legal restrictions. Sometimes, these considerations can't be met without temporary changes. It is the opinion of our Counsel that we have the authority to make temporary changes in basic work schedules and that such changes can be made anytime in advance of the service week. It has been our practice that we will notify employees of any necessary changes as soon as possible, but no later than Thursday of the preceding week.

Despite these considerations, I feel earlier notification should be possible and that no temporary changes should be made unless service needs preclude the use of regular

schedules. In this vein, I was happy to note the parties agreed to five different types of basic workweeks for scheduling of employees. Sound application of these provisions and experience in their use should reduce the need for temporary changes. Cooperation and understanding on the part of employees in notifying management as far in advance as possible of desired changes in schedules and necessary absences also will reduce the need for temporary changes.

My decision, therefore, is:

Temporary changes in hours and days of work shall not be made unless service needs at an installation preclude adherence to regular work schedules; such temporary changes shall be held to a minimum. Employees shall be given as much advance notice as possible of temporary work schedules, but in no case shall they be notified later than the end of their tours of duty the preceding Wednesday. If notified after Wednesday, employees required to work outside their regular schedules shall be compensated at the overtime rate if permitted by law. Temporary changes shall be reviewed each week. If a temporary change continues beyond two consecutive weeks, the exclusive organization may consult with the installation head to ascertain the reasons and expected duration.

Finally, the impasse concerning wash-up time presents a problem difficult, if not impossible, to handle in the National Agreement. The question of legitimate need for wash-up time and possible abuses more properly should be considered by the installation heads who are in a better position to answer them. I certainly have no objection to wash-up time when required by employees who perform particularly dirty work or work with toxic material. And I have no objection to installation heads, familiar with day-to-day activities of their employees and mindful of available funds, applying the rule-of-reason to the question of wash-up time. This seems to me to be the common

sense approach. If there are instances in which you believe the matter is not being handled fairly on the local level, you certainly may seek further consideration by higher authority.

As for travel time between time clock and duty station, I am sure you realize the Executive Order reserves for the Department the right to determine the methods and means by which its operations are to be conducted. Nevertheless, you are invited to bring any cases of alleged abuse in this regard to the attention of proper officials.

Sincerely yours,

/s/ LAWRENCE F. O'BRIEN,
LAWRENCE F. O'BRIEN.

MR. E. C. HALLBECK, President,
United Federation of Postal Clerks, AFL-CIO,
817—14th Street N. W.,
Washington, D. C. 20005.

PLAINTIFF'S EXHIBIT J.

Statement of Facts Concerning Re-Scheduling of June 18, 19, 1966, Douglas E. Groettum in Minneapolis Post Office.

On or about 2:00 p.m., Thursday, June 16, 1966, 25 minutes before I ended tour, I was informed by my Foreman that I would be required to work the following week-end, June 18, 19, 1966. Further that my off days of Saturday and Sunday would be changed to Monday, June 20th and Friday, June 24, 1966, for the following week.

On the following day, Friday, June 17, 1966, I observed the above fact was posted on the official Bulletin Board, showing re-scheduling of myself and other clerks for that week-end. My posted schedule was the same as that listed above.

It is my understanding that a record of the above rescheduled posting can be produced by the Post Office Department if they so desire. Further, a copy of the above posting was asked for by Local 125 and they were told by management that clearance would have to come from the Post Office Department, Washington, D. C. before this information could be given.

When making a change in a bid basic work assignment, management would post the changes to be effected on the Thursday preceding the week they wished changed with the names of individual clerks involved. This is what happened in my individual case, for on the following week beginning June 25, I again returned to my Monday through Friday work-week and have since that time maintained this bid basic work-week. For further substantiation of this change, see Additional Material Pertinent to the Grievances, page D-1, paragraph 4 attached with the appeal letter to Regional Director Winkel, dated, July 1, 1966.

/s/ DOUGLAS E. GROETTUM,
DOUGLAS E. GROETTUM,
Clerk,
Incoming Mails,
Minneapolis Post Office,
Minneapolis, Minnesota,
S/8-24-67.

Statement—Cahow & Miller.

We the undersigned do further attest to the fact that the "basic workweek" listed in the above is true and accurate to the best of our knowledge. We have observed the posting and do believe it was posted as stated in Mr. Groettum's statement and further documented in the Grievance appeal.

Further, management at all levels of appeal has never in anyway denied the fact that Groettum was rescheduled

on the week stated in his statement. Rather, they have contended that this is their right and have readily admitted to the re-scheduling.

/s/ EARL W. MILLER,
EARL W. MILLER,
Executive Vice President,
Local 125, U. F. P. C.,
S/8-24-67.

/s/ WILLIAM J. CAHOW,
WILLIAM J. CAHOW,
President,
Local 125, U. F. P. C.,
S/8-24-67.

The above signatures are those of men who are known to me as those who prepared the above statements.

/s/ AUSTIN A. FRISK,
AUSTIN A. FRISK,
Notary Public.

PLAINTIFF'S EXHIBIT K.

City of Washington, } ss.
District of Columbia. }

Affidavit.

E. C. Hallbeck, being first duly sworn, deposes and says:

1. That he is now and has been since August 27, 1960, the President of the United Federation of Postal Clerks, AFL-CIO.

2. That the Federation, on behalf of Douglas E. Groettum, filed a grievance which was processed through the Postmaster in Minneapolis, Minnesota, the Regional Director and the Post Office Department's Board of Appeals and Review in Washington, D. C.

3. Other appeals involving the same application of Pub. L. 89-301 have been similarly processed with decisions of the Board issued during 1967. In each case the Board followed the public position of the Postmaster General and denied the appeals on the ground that management had a right to temporarily alter the regular schedule.

4. Questionnaires were sent out by the Federation prior to the commencement of this action to all locals of the Federation. On the basis of the replies it was established that it is the widespread and general practice for postmasters to temporarily alter established schedules in the manner as alleged in plaintiff Groettum's case, i. e., to "temporarily detail" employees to "temporary basic workweeks" (Pltf. Ex. I).

5. On the basis of the answers to the questionnaires and of his own knowledge, affiant states that the management agents of the Postmaster General have and are continuing to apply Pub. L. 89-301 as instructed by the Postmaster General in accordance with his direction contained in Postal Bulletin 20553 (Ex. F) and in his letter to me of August 5, 1966 (Ex. I).

6. The Federation, in view of the fixed position of the Postmaster General to which the Board of Appeals and Review is bound, has not burdened either itself or the Department with time consuming and costly appeals because to do so would be a useless gesture as the answer would have been foreordained.

7. The bargaining agreement between the Federation and the Post Office Department which would have expired October, 1965, was continued by memorandum agreement between the parties until the new September 24th agreement became effective with the exception of certain parts of the former agreement which were in conflict with Pub. Law 89-301, as reflected in the Postal Bulletin of November 4, 1965, No. 20501, VII D.

8. The posting, bidding and assignment provisions of Postal Bulletin 20520, March 4, 1966, are now contained in essentially the same form in Art. XXII of the current Agreement between the Federation and the Department which became effective September 24, 1966 (Pltf.'s Ex. A); that in the interim period between March 4, 1966 and September 4, 1966 the procedures set forth in Postal Bulletin 20520 governed so that any permanent assignments made during that period were subject to the posting, bidding and assignment practices so established, just as such practices are applied to permanent changes in assignments today.

E. C. HALLBECK.

EXCERPTS FROM PLAINTIFF'S EXHIBIT M.

Bulletin No. 1480

PREMIUM PAY PROVISIONS FOR WEEKEND WORK IN SEVEN CONTINUOUS-PROCESS INDUSTRIES, 1966

United States Department of Labor
W. Willard Wirtz, Secretary

Bureau of Labor Statistics
Arthur M. Ross, Commissioner

Preface

This report on premium pay provisions, prepared by the U. S. Department of Labor's Bureau of Labor Statistics, was requested and financed by the Post Office Department. The report describes premium pay provisions under 486 major collective bargaining agreements in seven industries.

In establishments normally operating on a 5-day, Monday through Friday, workweek, it has become a common practice, under collective bargaining agreements, to pay

a premium rate for any work performed on Saturday and Sunday, or Sunday alone. The penalty rate in these circumstances is attached to work on the weekend, rather than to overtime as such, and is designed to discourage the scheduling of work on expected days of rest and recreation and to compensate workers for the inconvenience of working on these days.

In continuous-process establishments, on the other hand, work is regularly scheduled on Saturday and Sunday; these days thus become part of the normal 5-day workweek for some or most workers, depending on how shift schedules are set up. The designation of the sixth and seventh consecutive days of the workweek as the "weekend" for these workers resolves one problem, but others are raised by union demands for premium pay for regularly scheduled work on Sunday, and often Saturday as well, or for higher premium rates.

This report was prepared in the Bureau's Division of Industrial and Labor Relations by Rose T. Selby, under the supervision of Harry P. Cohany.

* * * * * * *

Premium Pay Provisions for Weekend Work in Seven Continuous-Process Industries, 1966

Summary

Nearly 95 percent of the major collective bargaining agreements studied provided for extra compensation for work on 1 or both days outside of the normal workweek, Saturday and Sunday, or the sixth and seventh day of the workweek. More than 50 percent of the agreements provided for premium pay to workers for whom Sunday was a regularly scheduled workday, and 10 percent extended this practice to regularly scheduled Saturdays.

Time and one-half was the most prevalent premium rate for work on all weekend days, either outside of the

regular workweek or as regularly scheduled workdays. A substantial number of agreements, however, provided for double time for work on Sunday and the seventh day, not regularly scheduled.

This study of weekend pay provisions is based on an analysis of 486 major collective bargaining agreements, each covering 1,000 workers or more and together covering 2.5 million workers, in the following continuous-process industries:[1]

Chemicals
Petroleum refining
Newspaper publishing
Primary metals
Communications
Electric and gas utilities
Transportation (including nonoperating employees in railroads and airlines)

All but 16 percent of the agreements were in effect in 1966; the remaining contracts expired in 1965. Although superseding contracts were not on file at the time this report was prepared, reports of settlements, where available, indicated that weekend pay provisions remained unchanged in these agreements.

The prevalence of premium pay provisions, premium rates, and minimum work requirements for work on Saturday, Sunday, sixth, and seventh day (or first and second days off), when these are not regularly scheduled days of work, are shown in tables 1-5. Premium pay provision for Saturday and Sunday included in the regular workweek are shown in tables 6-8. None of the agreements in the latter category stipulated minimum work requirements.

1 Although these industries are commonly considered as continuous-process industries, every company or plant covered by the agreements studied may not have been on continuous operations. There is no way of knowing this from the language of the agreement.

Premium pay provisions for work outside of the regular workweek in these seven industries have increased slightly since 1958,[2] while premium pay for regularly scheduled Saturday and Sunday work has increased substantially.

Weekend Work Not Regularly Scheduled

Sunday was most frequently specified as a premium day (333 agreements) (tables 1 and 2). Sixth and seventh days were specified in 291 and 309 agreements, respectively, and Saturday in only 137.

The combination specifying Sunday, and sixth and seventh days outside the regular workweek as premium days was most prevalent, occurring in over one-fourth of the 486 agreements. Nearly another fourth specified sixth and seventh days, without reference to Saturday and Sunday, and less than one-fifth specified only Saturday and Sunday.

Under nearly all of the provisions for Saturday and Sunday premium pay, extra compensation was to be paid regardless of the amount of time worked. Requirements that an employee work a specified number of days or hours during the workweek were more frequently established for sixth and seventh day premium pay.

Saturday Work. Over one-quarter of the agreements, accounting for a similar proportion of workers, provided for extra compensation for work on Saturdays outside of the regular workweek. In two branches of transportation—maritime and trucking—Saturday premium pay agreements covered 95 and 78 percent of the workers, respectively, while the railroad and airline agreements did not include such provisions.

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2 See Premium Pay for Night, Weekend, and Overtime Work in Major Union Contracts (BLS Bulletin 1251, 1959). An exact comparison cannot be made because of a difference in the composition of two of the industries studied. In the 1958 analysis, railroad and airline agreements were not included; and all of the printing and publishing agreements were included, while the 1966 study limited agreements in this industry to the newspaper segment.

Time and one-half for work on Saturdays, not part of the regular workweek, was specified in four-fifths of the 137 contracts with Saturday premium pay provisions, covering over one-half of the workers (table 5). In addition, a few contracts specified time and one-half for some occupations, locations, or assignments (such as maintenance or nonoperating employees, local trucking) and either double time or no premium for others. Some contracts also provided for time and one-quarter for Saturday morning and time and one-half thereafter.

Slightly less than one-tenth of the contracts, covering approximately one-fifth of the workers, contained clauses which varied the premium rates. Variations other than those mentioned in the preceding paragraph were found mainly in maritime agreements, which specified flat-sum premiums ranging from $1.78 to $4.23 per hour, according to wage range, occupation, and port or sea duty.

Most of the few remaining agreements granted additional sums per hour or day for Saturday work—from 3 cents to 30 cents per hour, $3 per day, and, in the maritime industry, from $2.58 to $4.23 per hour. Only two agreements provided for double time for Saturday work.

Sunday Work. Premium pay for Sunday work was provided for by over two-thirds of the agreements and covered the same proportion of workers. A large number of agreements in the primary metals industry specified a minimum premium rate of time and one-quarter "for all hours worked on Sunday which are not paid for on an overtime basis." These agreements made no other provision for Sunday premiums. The provisions were negotiated in 1956, principally to provide for extra compensation to continuous-process workers whose regular workweek included Sunday. However, since this premium could apply to any employee not eligible for overtime pay for Sunday work, these provisions were included

in the tabulations of pay for Sunday work, both outside the regular workweek and as part of the workweek.

Sunday premium pay was most prevalent in the primary metal and communications industries, and in two branches of transportation—maritime and trucking. Over four-fifths of the workers in these industries were under such agreements. As was noted for Saturday pay, the railroad and airline agreements did not provide for extra compensation for Sunday work.

While time and one-half was the most prevalent rate for Sunday work, it was not as frequently specified as for Saturday work (table 5). Approximately one-third of the workers were covered by agreements specifying time and one-half; 15 percent were under agreements providing time and one-half in some instances and double time in others; and double time applied to 16 percent of the workers. The agreements referred to earlier, which granted time and one-quarter for all Sunday work not paid for on an overtime basis, accounted for 25 percent of the workers in all industries, and 76 percent of those in primary metal.

Time and one-half was specified most frequently in agreements in the maritime and communications industries. Double time was specified in approximately one-half of the agreements in the chemical and trucking industries, and in over two-fifths of the utility agreements.

Of the 26 agreements which granted time and one-half or double time, 12 in the telephone industry granted double time instead of time and one-half for the second or third and subsequent consecutive Sundays worked. The remaining 14 provided for double time if Sunday fell on the seventh day or was the seventh day worked, or granted double time for special groups or conditions. Three agreements in the trucking industry, covering over 40 percent of the workers in that industry, fell into the latter category.

A few agreements specified premium rates ranging from 40 cents to 90 cents per hour, and a few specified minimum premiums of 20 cents to 75 cents per hour, unless overtime or a higher rate was applicable. Two New York transit agreements granted 3 cents per hour and four maritime agreements specified flat sums ranging from $2.80 to $4.23 per hour. A few other maritime agreements varied the premiums—ranging from $1.78 to $4.23 per hour—by occupation, or port or sea duty. Rates in the remaining agreements included combinations of time and three-fifths, or time and three-quarters, and double time, according to location; there were also agreements including provisions for triple time for emergency work.

Sixth Day. Extra compensation for work on the sixth day of the workweek was provided for in three-fifths (291) of the agreements (table 5). Saturday premium pay was also provided for in 43 of these agreements.

Approximately three-fifths or more of the contracts in all but two industries—trucking and maritime—granted premiums for sixth-day work. In trucking, one-third of the agreements made such provisions; in maritime, none of the agreements specified sixth-day premiums, but 24 of the 26 agreements in this industry granted extra pay for Saturday work. The railroad and all 15 airline agreements included sixth-day premiums, but did not specify Saturday premiums.

Time and one-half for work on the sixth day was specified in 279 (96 percent) of the 291 contracts which provided extra compensation for work on the sixth day of the workweek. Only two agreements granted double time for sixth-day work, and one granted double time instead of time and one-half if less than 50 percent of the department worked on the sixth day. Most of the remaining nine agreements provided time and one-half only for certain occupations, locations, or assignments. One, covering taxicab drivers, specified 3 cents per hour or 5 per-

cent commission, whichever was greater, and another, covering broadcasting technicians, granted premium pay of $3.50 per hour.

Seventh Day. Nearly three-fourths of the workers were covered by provisions for premium pay for seventh-day work (table 5). This percentage was slightly higher than the number covered by Sunday premium arrangements, although the number of agreements (309) including seventh-day provisions was a little less than those with Sunday premium provisions (333).

The industry pattern was similar to that for sixth-day premium pay. Except for trucking and maritime, approximately three-fifths or more of the contracts provided for seventh-day premium pay. None of the maritime contracts included this provision; one-third of the trucking agreements, covering one-half of the workers, did specify seventh-day premiums. All of the contracts in the airline and railroad industries provided for seventh-day premiums.

Time and one-half was the predominant premium rate specified, occurring in nearly one-half of the contracts, covering three-fourths of the workers. Although over one-third of the agreements granted double time, these accounted for only one-sixth of the workers, the same proportion covered by double time for Sunday work. A small number of agreements (36) granted double time in some instances and time and one-half in others. Of these, the 15 airline agreements granted double time if the sixth day also was worked without requiring work on 7 consecutive days. Most of the remaining 21 provisions in this category granted double time only for the seventh consecutive day worked.

Time and one-half was the most predominant premium rate in these industries: Newspaper, primary metal, railroad, passenger transit, and communications. Four-fifths

or more of the workers under agreements in these industries were to receive time and one-half as seventh-day premium pay. Provisions for payment of double time covered more than two-thirds of the workers in only one industry—chemicals.

The nine remaining agreements provided for diversified premiums similar to those granted for sixth-day work.

Minimum Work Requirements. Requirements that an employee work a specified number of days or hours during the workweek to qualify for premium pay were rarely specified for Saturday and Sunday work. Only 11 agreements included minimum work requirements for Saturday premium pay, and 9 for Sunday premiums (table 3).

Minimum work requirements were more frequently established for the sixth and seventh days. Premium pay was granted, regardless of time worked, under 47 percent (137) of the provisions for sixth-day work and 38 percent (118) for seventh-day work.

The employee was required to have worked a full weekly schedule to qualify for Saturday premium under 11 agreements, and to have worked either 5 or 6 days during the week to qualify for Sunday premium under 9 agreements (table 4).

All but 5 of the 154 agreements with minimum work requirements for sixth-day premium pay required the employee to have worked a full weekly schedule. The remaining provisions required some work on each of the previously scheduled days or work for a specific number of hours during the week (table 4).

Of the 191 agreements granting seventh-day premium pay, over two-fifths (82) required the employee to have worked a full 6-day schedule; another two-fifths (84) specified a full 5-day schedule. Most of the remaining agreements required work either on some portion of each

of the 5 or 6 scheduled workdays, or on the sixth day of the workweek without requiring 6 days' work (table 4).

Many agreements modify the work requirements by stipulating that time lost during the week for specific reasons or for excused absences would be counted as time worked in determining eligibility for premium pay. Absences counted as time worked include time lost because of lack of work, illness, injury on the job, official union business, personal leave for specific reasons, and, in most instances, holidays. Some provisions merely state that "excused absences" will be counted as time worked. Almost two-thirds of the agreements modified the restrictions for each of the premium days by counting certain absences as time worked.

Saturday and Sunday as Part of the Regular Workweek

Workers regularly scheduled for Saturday and Sunday work were granted extra compensation for work on Saturdays in 50 agreements, covering slightly less than one-tenth of the workers, and on Sundays in 254 agreements, covering over 50 percent of the workers (table 6).

Provisions for Saturday premium pay were predominant in maritime agreements, covering three-fifths of the workers, and, to a lesser extent, were included in chemical agreements, covering slightly more than one-fifth of the workers.

Sunday premium pay provisions were concentrated in four industries—primary metal, communications, chemicals, and maritime. In primary metal and communications, approximately 90 percent of the workers were covered by such provisions; in maritime, 60 percent; and in chemicals, 40 percent. None of the petroleum, railroad, and airline agreements granted premium pay for regularly scheduled Saturday or Sunday work.

Time and one-half was most frequently specified for both Saturday and Sunday premium pay, occurring in

18 of the 50 agreements granting Saturday premiums and in 100 of the 254 contracts granting Sunday premiums (table 7). Although 64 agreements granted time and one-quarter for Sunday work, the employee coverage was almost the same as that for time and one-half. This large number at time and one-quarter for Sundays is accounted for by 46 basic steel contracts, covering over 440,000 workers. Only two agreements specified time and one-quarter for Saturday work, and none provided double time for that day. For Sunday work, 14 agreements specified double time; 12 in the telephone industry granted time and one-half for the first or first 2 Sundays and double time for second or third and subsequent Sundays.

Diversified premium rates were specified in the remaining agreements. Included were rates ranging from 3 cents to 50 cents per hour for Saturday work, and from 3 cents to $1 per hour for Sunday work. In addition, there were provisions for minimum rates of 25 to 50 cents per hour for Saturday or Sunday work unless higher premiums were applicable, and flat sums varying for "standby" time and time worked for both days. Also included for Saturday and Sunday work were provisions granting 10 cents and 15 cents per hour for some groups, or time and one-half for some groups or locations, and straight time for others. Maritime contracts also provided for flat sums ranging from $1.78 to $4.23 per hour, varying by occupation, and by port or sea duty. A few agreements specified, for Sunday work, one and one-tenth, one and one-fifth, one and three-fifths and one and three-fourths.

None of the provisions for work on regularly scheduled Saturdays or Sundays required an employee to work a specified number of days or hours to qualify for premium pay; extra compensation was granted regardless of the amount of time worked during the week.

Saturday was referred to as a regular workday in 123 agreements which did not provide premium pay for that

day; and, similarly, Sunday was referred to in 69 agreements.

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EXCERPTS FROM PLAINTIFFS' EXHIBIT N.

PREMIUM PAY FOR NIGHT, WEEKEND, AND OVERTIME WORK IN MAJOR UNION CONTRACTS.

Bulletin No. 1251

United States Department of Labor
James P. Mitchell, Secretary

Bureau of Labor Statistics
Ewan Clague, Commissioner

Premium Pay for Weekend Work, 1958.

The payment of premium rates for work performed on Saturday and Sunday, or on the sixth and seventh days of the workweek, has become a common feature of collective bargaining agreements. Over 90 percent of 1,736 major collective bargaining agreements studied in 1958 by the U. S. Department of Labor's Bureau of Labor Statistics provided time and one-half, or double time, or a variable premium, for work on one or both days outside of the normal workweek.

Seventy-five percent of the agreements specified Sunday as a premium day, and 57 percent specified Saturday. Premium rates were specified for work on the sixth day in 35 percent of the contracts, and for work on the seventh day in a like proportion. A substantial number of contracts identified both Saturday and the sixth day, and Sunday and the seventh day, as premium days. Nearly 15 percent of the agreements provided premium pay to workers for whom Sunday was a regularly scheduled workday, and a few extended this practice to regularly scheduled Saturdays.

The payment of premium rates for weekend work serves as a reward to employees for work on days normally considered rest days and as a deterrent to employers in scheduling work on these days. Weekend premium pay provisions of agreements tend to liberalize legal overtime requirements in several ways. The Fair Labor Standards Act requires the payment to covered workers of time and one-half for hours in excess of 40 a week, without reference to the day on which overtime hours are worked, but premium rates for Saturday and Sunday work are commonly required under agreements regardless of the number of hours previously worked during the week. When minimum work requirements are specified, as is frequently the case where the sixth and seventh days are named as premium days, holidays and certain excused absences are often counted as time worked for premium pay eligibility. Rates in excess of time and one-half prevail for Sunday and seventh day work, and are sometimes specified for Saturday work. Pyramiding of premium rates for weekend work on top of weekly overtime premiums is generally prohibited.

Major changes in weekend premium pay practices since 1952, the date of the Bureau's previous study,[1] include provision for premium pay for work on Saturday as such (occurring outside of the regular workweek) in all of the major automobile agreements, and for Saturday and Sunday as such in the major coal mining agreements. Premium pay for regularly scheduled Sunday work (part of the regular workweek) was incorporated into basic steel agreements negotiated in 1956; the rates specified progressed from time and one-tenth during the first year to time and one-fourth for the third year (1958). Since then, a number of agreements negotiated in related industries have included provisions for premium pay for regularly scheduled Sunday work.

1 See Premium Pay for Weekend Work, 1952 (in Monthly Labor Review, September 1953, pp. 933-939).

In general, the 1958 study reveals a small increase since 1952 in the proportion of major contracts with weekend premium pay provisions, and a somewhat greater increase in worker coverage under agreements specifying Saturday premium pay. This has been accompanied by a slight decrease in the proportion of agreements which made Saturday premium pay dependent upon the employee working a specified amount of time during the week, and a more marked decrease in agreements containing minimum work requirements for sixth and seventh day premium pay.

Scope of Study

This study was based on 1,736 collective bargaining agreements, each covering 1,000 or more workers, or virtually all agreements of this size in the United States, exclusive of those relating to railroads and airlines.[2] The total of 7.8 million workers covered represented almost half of all the workers estimated to be under agreements in the United States, exclusive of railroad and airline agreements. Of these, 5 million workers, covered by 1,122 agreements, were in manufacturing, and 614 agreements applied to 2.8 million workers in nonmanufacturing establishments.

All but 71[3] of the 1,736 agreements were in effect during 1958. Approximately 50 percent of the agreements were scheduled to expire in 1958. Termination in 1959 was stipulated in about 35 percent. Of the remaining 209 long-term agreements, 12 did not list a specific termination date.

Contracts which provided overtime pay for work in excess of the regular daily or weekly hours, without speci-

2 The Bureau does not maintain a file of railroad and airline agreements, hence their omission from this study.

3 These agreements expired late in 1957 and subsequent agreements were not available at the time of the study.

fying Saturday, Sunday, sixth, or seventh days, or the employee's regular day(s) off, were not counted as providing weekend premium pay for purposes of this study. Although overtime pay would normally cover weekend work if the employee had worked the full basic workweek or fulfilled other specified minimum work requirements, such provisions do not grant special recognition to weekend days as such.[4] However, clauses providing premium pay for all work "outside the regular workweek were interpreted as granting extra compensation for weekend work as such and were included in the study.

4 See section on Hours of Work and Overtime Provisions.

Table 1. Premium pay for weekend work not part of regular workweek, in major collective bargaining agreements, 1958.

Premium days	Agreements		Workers	
	Number	Percent	Number (thousands)	Percent
Total studied	1,736	100.0	7,752.5	100.0
Number with premium pay for weekend work	1,589	91.5	7,025.8	90.6
Provisions for premium pay for work on Saturday and Sunday	642	37.0	2,267.6	29.3
Saturday, Sunday, 6th and 7th days	253	14.6	1,666.3	21.5
6th and 7th days	215	12.4	1,072.5	13.8
Sunday only	216	12.4	881.4	11.4
Saturday, Sunday, and 7th day	45	2.6	347.9	4.5
Saturday only	28	1.6	240.0	3.1
Sunday, 6th and 7th days	59	3.4	205.7	2.7

Sunday and 6th day	47	2.7	125.0	1.6
6th day only	15	.9	68.9	.9
7th day only	29	1.7	58.8	.8
Sunday and 7th day	18	1.0	44.1	.6
Saturday, Sunday, and 6th day	13	.7	30.2	.4
Other combinations[1]	9	.5	17.7	.2
No provision for premium pay[2]..	147	8.5	726.7	9.4
Premium days specified:[3]				
Saturday	987	56.9	4,564.8	58.9
Sunday 1,300		74.9	5,584.1	72.0
6th day	608	35.0	3,186.6	41.1
7th day	622	35.8	3,405.7	43.9

1 Includes agreements providing premium pay for work on Saturday, 6th and/or 7th day; and Saturday afternoon and/or Sunday for some workers and Sunday only for others. Also includes several beet sugar manufacturing and other food processing agreements which grant premium pay only during certain seasons for work on Saturday and/or Sunday.

2 Includes agreements which specifically prohibited Saturday and/or Sunday work.

3 Nonadditive. These days may be specified singly, or in combination, in one agreement.

Note: Because of rounding, sums of individual items may not equal totals.

Nine out of ten major agreements granted extra compensation for work on one or more weekend days. Provisions specifying Saturday and Sunday (not part of the regular workweek) as premium days, without reference to the sixth or seventh day, were most prevalent, occurring in over one-third of the contracts analyzed (table 1). Other significant provisions specified premium pay on (a) Saturday and Sunday for employees on regular schedules and on the sixth and seventh days for those on off schedules; (b) sixth and seventh days without identifying Saturday and Sunday and (c) Sunday only.

Saturday and Sunday Not Regularly Scheduled

Extra compensation for work on Saturday, as such, was provided for in 987 (over one-half) of the agreements

analyzed, and on Sunday in 1,300 agreements (three-fourths). A fourth of these clauses, however, exempted employees in continuous-process operations or in certain occupational groups, such as watchmen, guards, maintenance men, and engineers, for whom Saturday or Sunday work was regularly scheduled. Instead, premium pay for the sixth and seventh workdays (or for their regularly scheduled days off) was provided, as in the following example:

> Employees, excepting employees in the powerhouse, shall be paid at the rate of one and one-half (1½) times their respective regular straight-time rates for all time worked by them during the calendar day on a Saturday and at the rate of twice their respective regular straight-time rates for all time worked by them during the calendar day on a Sunday. . . .
>
> Powerhouse employees only shall be paid at the rate of one and one-half (1½) times their regular straight-time rate for all time worked by them on their first regularly scheduled day off in the workweek and at a rate of twice their regular straight-time rate for all time worked by them on their second regularly scheduled day off in the workweek.

Daily and Weekly Overtime

Pay at the rate of time and one-half for work in excess of 40 hours a week is required by the Fair Labor Standards Act for employees engaged in interstate commerce or in the production of goods for such commerce. Of more limited application, the Public Contracts (Walsh-Healey) Act of 1936, which applies to work performed on United States Government contracts in excess of $10,000, also calls for time and one-half rates for work in excess of 8 hours a day. Relatively few of the major agreements studied did not liberalize the overtime pay requirements

of the Fair Labor Standards Act (table 4). The chief methods, as revealed by this study, provided for daily overtime rates or premium overtime rates for all work outside of the normal schedule. In addition, union agreements frequently define "hours worked" for overtime pay purposes more liberally than the law requires (for example, by counting holidays as working time). Another common practice, but not covered in this study, is the payment of premium overtime rates for all work performed on Saturday or Sunday.[6]

Notwithstanding the Federal requirements, all but 106 of the 1,813 agreements studied contained specific provisions covering overtime payments. With few exceptions, the agreements provided for premium rates for work in excess of 8 hours (or less in some cases) in any one day. On a 5-day week schedule, daily overtime, perhaps with provisions for premium pay for Saturday and Sunday, normally governs weekly overtime as well; thus, many agreements contained no reference to weekly overtime (in terms of number of hours).[7] Provisions for overtime pay for hours less than 8 per day or 40 per week were relatively uncommon.

One out of 8 agreements, distributed widely among manufacturing and nonmanufacturing industries, provided premium rates for all work performed outside of regularly scheduled hours, regardless of the number of hours previously worked. About 3 out of 4 major agreements in the printing industry fell in this category, as did a significant number of agreements in the construction and apparel industries.

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EXCERPTS FROM PLAINTIFFS' EXHIBIT O.

FEDERAL PAY LEGISLATION.

Hearings
Before the
Committee On
Post Office and Civil Service
United States Senate
Eighty-Ninth Congress
First Session
ON
Legislation Pertaining to Federal
Employees Compensation

August 16, 23, 26, 27, 30, October 5, 6, and 8, 1965.
Printed for the use of the Committee on Post Office and Civil Service.

Federal Pay Legislation

Monday, August 16, 1965

U. S. Senate,
Committee on Post Office and Civil Service,
Washington, D. C.

The committee met at 10 a. m., pursuant to call, in room 6202, Senate Office Buildings, Senator A. S. Monroney (chairman of the committee) presiding.

Senators present: Senators Monroney, Yarborough, Randolph, Carlson, and Fong.

Also present: William P. Gulledge, staff director and counsel; David Minton, LeGrand A. Rouse II, and Hugh B. Key, professional staff members; and Frank A. Paschal, minority clerk.

The Chairman. The Post Office and Civil Service Committee will be in session.

This hearing is convened for the purpose of taking testimony on Federal salary legislation. You all know the salary bill is waiting clearance by the Rules Committee in the House, and because it may be delayed for some days, it was the consensus of the committee that it would be wise for us to begin taking such testimony as would be appropriate, at this time, so as not to unduly delay the consideration of the bill on the Senate side. Because of its magnitude and its impact on the lives of so many Federal employees, we are very desirous not to wait until the bill has passed the House, as is our usual custom. Because of the lateness of the session we intend to take this testimony that is available at this time and we will fill in from the action of the House at a later date.

The committee is very pleased to hear today Mr. J. W. Macy, Jr., of the Civil Service Commission, Chairman; and Mr. Charles Schultze, Director, Bureau of the Budget. It is hoped that further hearings may be scheduled later this week to hear other administration witnesses and other interested parties. Notification will be given as to these dates as quickly as possible.

We are happy to have you here, Mr. Chairman, and you may proceed in your own way.

Senator Carlson. I would like to say I appreciate the chairman, Mr. Monroney, calling this hearing on this legislation, and I think we should begin to consider it early, because as one Member of the Senate, I hope we can conclude this session of Congress within the next 3 or 4 weeks. I think we should try to get action as soon as possible on this. I appreciate your calling this hearing.

The Chairman. Thank you, Mr. Carlson. We also appreciate your very fine cooperation.

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Federal Pay Legislation.

Monday, August 23, 1965.

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The Chairman: This hearing is reconvened for the purpose of taking further testimony on Federal salary legislation. Future hearings will be scheduled as soon as possible to get the views of other organizations and persons interested in this subject. Our first witness this morning is the Honorable John A. Gronouski, Postmaster General of the United States.

He is accompanied by Mr. Richard J. Murphy, Assistant Postmaster General.

* * * * * * *

We appreciate very much your coming up Mr. Gronouski. You are one of the bigger employers of Federal personnel and you have always been one of the most sought after witnesses in the matters affecting our 2½ million Federal employees. We will be glad to have you proceed in your own way.

Statement of Hon. John A. Gronouski, U. S. Postmaster General; Accompanied by Richard J. Murphy, Assistant Postmaster General, Bureau of Personnel; and Herbert Block, Director, Bureau of Personnel.

Mr. Gronouski: Thank you, Mr. Chairman and members of the committee, I appreciate the opportunity to come before the committee and give you our views on two very important proposals.

To increase Federal civilian employee salaries, and to modernize the laws covering premium pay for postal overtime work. Mr. Chairman, I especially appreciate your introducing two bills which would accomplish these ends: S. 1997 relating to pay and S. 2085 relating to postal premium pay for overtime work.

It is an exhilarating experience to be part of an administration which has dedicated itself to an active and constructive approach to personnel and labor relations. It is easy to talk about needed personnel and pay reforms. It is far more difficult to convert talk into action. And that is what we have been doing—all of us.

Congress acted in 1962, when the basic reforms on Federal pay administration were conceived. And again last year Congress followed through when it became clear that action was needed to adjust congressional salaries, as well as those of the judicial and executive branches at the top policy level. I commend the Congress for its courage in facing up to situations that demand action.

I am happy to say that this administration, as well as that of the late President Kennedy, has supported salary increases for postal workers which, since 1962, have averaged 16.8 percent, or when compounded on the 1962 base, 17.6 percent, at a cost of some $613 million. Pay setting, however, is not a matter that can stay settled. As long as we have a growing, changing, and competitive economy, the Federal Government must be prepared to adjust its salary rates accordingly in order to attract and retain competent personnel.

Again this year, the President proposed some needed legislative changes in the personnel and pay area. The objective in each instance was to assure sound and progressive personnel practices.

This was also the objective of the President's Special Panel on Federal Salaries, of which I was happy to be a member. The Panel comprised a balanced cross-section of leaders from education, labor, government, and industry. While they represented a viewpoint hardened by experience, they had sufficient breadth and wisdom to take a broad, constructive, and long-range view of the entire scope of Federal salaries.

Frankly, I was gratified with the opportunity afforded all of us to learn something about the special pay prob-

lems of other services to think about the national economic implications of Federal pay, and to help reach a concensus as to what ought to be recommended for the national welfare.

* * * * * * *

I have spoken only in the broadest terms about the procedural changes proposed by the President and about the average increase of 3 percent, since other administration spokesmen have gone into the specifics of those proposals. The matter I wish to spend most of my time on—and the one of extreme importance to the Post Office Department—is the whole question of premium pay and compensatory time for overtime work in the postal service.

Early in my tenure as Postmaster General I learned to my amazement that—

1. We were regularly working large numbers of employees for excessively long periods of time over the commonly accepted 40-hour week.

2. Our substitute employees received straight time rates regardless of the number of hours worked.

3. Our regulars, ostensibly assigned Monday-through-Friday schedules, were getting only compensatory time for working many Saturdays and Sundays.

These antiquated, unsatisfactory practices basically stemmed from an ever-increasing workload, accompanied by only a token increase in manpower. Since the law requires a compensatory day off for regulars within 5 days after working a Saturday or Sunday, substitutes became the workhorses of the Department, working many hours of overtime at straight pay. Correction of this inequity has become the No. 1 goal of major postal unions, as well as of the Department.

The first front of our attack on this problem was to reduce the weekly work hours per employee by obtaining authority to hire more people. As this committee knows, our request for additional manpower was partially granted by the Congress—8,896 people instead of 15,000 requested. Also, Congress passed Public Law 89-114, exempting the Post Office Department from the legislative ceiling. As a consequence of these authorities from Congress, I have directed that no employee shall work more than 56 hours a week and that about 20,000 temporary jobs be changed to career ones.

The second front of our attack centers on the question of premium pay. We started with some elementary premises:

1. Postal operations are continuous: As part of the communications network of the country, like newspapers, radio, and telegraph, we must operate 24 hours a day, 7 days a week. It is as important to move the mail on Saturday as on Monday, even though the volume is down somewhat. As an illustration, I have prepared this chart.

* * * * * * *

2. Cash for overtime instead of compensatory time is by far the prevalent practice for rank-and-file employees in industry.

(The chart referred to follows:)

Hours, Overtime Practices in Government, Industry

(Rank & File Employees)

Law and/or Employees Covered	Hours in Standard Work Week	Time & ½ Time & ½ Over 40 Hours Per Week	Time & ½ Over 8 Hours in Day	Required Compensatory Time
Walsh-Healey Act	40	YES	YES	NO
Work Hours Standards Act	40	YES	YES	NO
Fair Labor Standards Act	40	YES	NO	NO
Wage Board	40	YES	YES	NO
Classification Act	40	YES	NO (But hours over 8 normally boost total over 40)	NO
Postal Field Svc. Regulars	40	NO	YES	YES Saturday & Sunday
Postal Field Service Subs. Career & Temporary	Unlimited	NO	NO	NO

3. The 40-hour workweek and pay at the rate of time and a half over 40 are basic elements of the all-embracing Fair Labor Standards Act.

4. Personnel above the rank-and-file level should receive the same overtime pay or compensatory treatment as other Federal employees on the same level.

5. Premium pay for substitutes, since they are really a (illegible) auxiliary "on call" work force, should be measured not in terms of daily factor but for the total hours worked in any week.

Mr. Chairman: S. 2085 proposes legislation which encompasses above premises. Specifically, S. 2085 provides:

1. Regular employees should have a work schedule of 40 hours a week, consisting of five 8-hour days. For work in excess of that schedule—more than 8 hours in 1 day, or duty on a sixth or seventh day—premium pay will be required for all employees in salary levels PFS-7 or below. There would be no compensatory time. While Saturday and Sunday are not identified for special treatment, we have no intention of expanding weekend duty for employees. In fact, we will continue our present policy of limiting weekend duty as much as possible.

The 5-day workweek within a 7-day period would make no basic change in the hours and days actually worked by regulars, but they would derive additional benefits. Any work on a scheduled off day would be paid at the rate of time and a half in cash rather than in compensatory time off. Also, a regular assigned to work on a weekend would be eligible for annual leave or sick leave for that day.

Furthermore, by eliminating the compensatory system for rank-and-file personnel, we would eliminate much dissension during the Christmas period over the question of how regulars are to be compensated for work performed on weekends in December.

2. Substitutes: S. 2085 would end their second-class status by paying them time and a half for all hours of work in excess of 40 in any 1 week. This arrangement is exactly the requirement under the Fair Labor Standards Act which applies to almost 30 million wage and salary workers in the United States and to almost 100 percent of workers in the communications, transportation, and utilities industries which are most comparable to ours.

Premium pay for both regulars and substitutes would be at the same base rate; that it, the basic hourly rate for computing overtime is obtained by dividing the annual rate by 2,080.

3. Hourly rate regulars: These are employees whose work, while recurring, does not normally extend over an 8-hour tour. Cleaners, for example, generally clean and dust executive offices for about 4 hours a day, for example, starting at 5 p. m., for 6 days a week.

The proposed bill would give them overtime pay for work in excess of 40 hours a week as well as over 8 hours in 1 day.

4. Holiday pay: At the option of management, employees up to salary level PFS-15 would receive cash premium pay or compensatory time for working on a holiday. Currently employees in levels PFS-8 and above receive only compensatory time for holiday work.

5. Supervisory pay: Currently, premium pay for overtime by supervisors stops at salary level PFS-7. The proposed legislation would give supervisors above level 7 additional pay not to exceed 150 percent of the top salary rate of PFS-7 or, at management's option, compensatory time. The level was selected because it represents the majority of our firstline supervisors. We believe it is right and proper for a firstline supervisor to receive a full measure of pay for overtime. Otherwise, some of his subordinates would earn more in some weeks than he does. This is not a problem, however, for supervisors above PFS-7, who enjoy a sufficiently high base wage.

6. Exemptions: Section 3 of the proposed bill bars overtime premium pay for officials with managerial responsibilities and certain other employees, such as rural carriers who are paid on a mileage rather than hourly basis.

Substitutes are excluded from the section relating to schedules, since by definition they are "on call" employees. They are also excluded from the section on holiday benefits because they already have built into their basic hourly pay a pro rata amount for holiday work.

Hourly rate regulars are excluded from the section on arrangement of a 5-day, 40-hour-week schedule. There may be a need to regularly schedule some of these em-

ployees over a 6-day period as is now done in many instances.

These provisions sum up the principal features of the proposal on postal overtime pay. It has been a privilege to discuss them with you. I am sure that we have not covered all the points of interest to you, and Assistant Postmaster General Richard Murphy and I will be glad to answer any questions this committee may have.

Before that, however, I have asked Mr. Murphy to express our thoughts to you on the measure recently approved by the House Post Office and Civil Service Committee—H. R. 10281 as it relates to postal matters.

Mr. Murphy: On August 5, 1965, the House Post Office and Civil Service Committee approved a bill, H. R. 10281, containing many liberal premium pay proposals, which we believe go far beyond the general precept that, while the Federal Government ought to be a fair and progressive employer, this cannot be done without reference to prevailing industry practice. In view of the magnitude of postal operations, competing for labor in every city and town in the Nation, the term "prevailing industry practice" must not be lightly construed. It must necessarily mean what the majority of industry is doing and not what might be a special situation in one or two locations.

Specifically, with reference to the House Post Office and Civil Service Committee's action on H. R. 10281, I offer the following comments:

1. Designation of a workweek: H. R. 10281 provides that all postal field service employees shall have a basic workweek consisting of five 8-hour days excluding Saturday and Sunday. Where necessary, and only for annual rate employees, Saturday may be substituted for one of the 5 workdays. This requirement is defective first because as written it applies to substitutes and hourly rate regular employees. Substitutes are used "as needed". Since they do not have a schedule, they should be excluded from any workweek requirement. Hourly rate

regular employees are frequently employed for a few hours over 6 days a week and thus also should be excluded from the 5-day-week concept.

Secondly, Sunday will always be outside the workweek and therefore a premium workday. We believe that a scheduled workweek should be reserved only for regular annual rate employees and that there should be latitude to schedule the workweek for annual rate regulars of 40 hours over any 5 days in the calendar week. Actually, this is the way post offices now employ their personnel. It is not our intention to change schedules for the sake of change, but only to recognize the in fact operational situation.

2. Premium pay for Sunday work at rate of time and one-half: We have not found this kind of payment prevalent in industry. While many union contracts specify Sunday as a premium-pay day, a distinction needs to be made between Sunday work as such and Sunday work as one of the 5 scheduled days of work. Many contracts specify Monday as the first workday; therefore, Sunday automatically becomes the seventh day. The most recent study by the Bureau of Labor Statistics indicated that only about 15 percent of the union contracts provided premium pay to workers for whom Sunday was a regularly scheduled workday. When Sunday is a "special" day, the premium varied from a flat sum per hour in addition to base pay, for example, 25 cents per hour, to a percentage factor. Time and one-half was provided in about one-third of the contracts recognizing Sunday as a premium day within the regularly scheduled workweek.

Based on current costs and employment practices, if we had to pay time and one-half to all employees now required for Sunday duty, the cost would be about $37 million a year. We would heartily favor the expenditure of $37 million if this meant following "prevailing industry practice." We do not see how we can endorse such a proposal when it is followed by only a small fraction

of industry and then, even of that fraction, only one-third pay the time and one-half rate proposed by the House committee. If we are to give the Nation prompt and economical postal service, some employees will be quired to work on Sunday—it is a working condition known to employees before they are hired.

3. Work hours limitation: H. R. 10281 provides that no employee shall work more than 12 hours in one day except for an emergency. We concur in this limitation.

4. Substitutes: H. R. 10281 provides payment at time and one-half rates to substitutes for all hours worked in excess of 8 hours in 1 day or 40 hours in 1 week. We had recommended overtime only after 40 hours in 1 week. Total cost of this item is $38.4 million. Of this amount about $14.8 million would be payment for work in excess of 8 hours in 1 day. Considering the character of substitute employment, we believe it is inappropriate to consider these employees equivalent to regularly scheduled personnel for pay treatment. Overtime premium pay typically has two purposes.

(1) To encourage the employer to hire additional workers rather than pay a premium. The assumption here is that the work is regular and recurring, and this susceptible to be assigned to regular employees.

(2) To pay a differential to scheduled employees for inconveniencing them for working beyond their schedule. These purposes clearly do not apply to substitutes. Our constant objective is to regularize work whenever it is possible, leaving the unplanned, intermittent work for substitutes.

When a person is employed as a substitute he knows that he has no schedule and is subject to varying hours—long hours one day and short hours another. Further, we have many situations where we use certain substitutes only for a few nights a week or for the weekend. For example, many college students work only on weekends for as many hours as they can obtain—it would be in-

congruous to pay them premium pay for over 8 hours, when their total weekly employment may be only 20 hours. On the other hand, we strongly advocate the need to conform to the requirements of the Fair Labor Standards Act relative to payment at time and one-half for work in excess of 40 hours in 1 week; so our objection then is to payment for time and one-half over 8 hours a day.

* * * * * * *

Mr. Murphy: And the elimination of some comp time for supervisors. I wish to emphasize, however, that the Post Office Department—

> Strongly favors a 3-percent increase in the statutory pay schedules as thoroughly warranted.
>
> Favors overtime compensation at 150 percent for both regular employees and substitutes in the postal service who work beyond 40 hours a week.
>
> Favors extending the premium pay provisions to postal supervisors through PFS-14.
>
> Favors payment for expenses incurred by employees as a result of relocation, not only to postal employees but to other Federal employees as well.

H. R. 9800, which is now receiving active consideration, would provide generous coverage in this respect:

> Favors enactment of legislation providing severance pay to separated employees.
>
> Favors legislation establishing a Federal Salary Review Commission and procedures for timely consideration of salary legislation.

We join Chairman Macy of the Civil Service Commission and Director Schultze in offering our assistance in securing enactment of these progressive proposals.

* * * * * * *

Senator Carlson: With the ever-increasing volume of mail, all I want to say is I think you are doing a good job, a fine job.

Senator Randolph: With both the Postmaster General and the Assistant Postmaster General present today causes me to ask a question which is not on this subject.

I read in the newspaper in recent days of the apparent backlog of mail due to a transfer from rail to truck. I think before this committee today it might be helpful if a further explanation than the one which was given in the news story could be added.

The Postmaster General: I would like to unless Mr. Murphy has been closer to that specific situation than I have, but I would like to submit that for the record if it is possible because I read it in the newspaper yesterday myself and that is where I learned about it, and I asked the staff this morning to give me a report on it.

I do not have the answer right now but I will be very happy when I get my report to get it to you.

Senator Randolph: Mr. Chairman, if there would be no objection, that statement could be in response to my question and could be supplied later for the record. I just felt it is a matter of concern as we make these transfers.

The Postmaster General: I assure you it is a matter of concern to me, too.

(Subsequently the Post Office Department supplied the following memorandum:)

Information Relative to August 22 Newspaper Articles on Pile Up of Mails at Washington, D. C.

Effective August 16, the Washington region was authorized by the Department to activate its plan for providing second-day parcel post service throughout the States of Virginia, West Virginia, and Maryland, including the District of Columbia. The shift of local mail for these States from railroad to highway to achieve the service objective involved a substantial change. It was necessary that all employees apply new routing and dispatching knowledge geared to newly established transportation schedules and places of dispatch and receipt.

To effect the changeover, a new trucking facility was secured under contract in Alexandria, Va., and with the revised pattern of interchanging mail between this facility, the Washington, D. C., post office, and the railroad station, some initial problems arose including excessive buildup and congestion at facilities on Thursday and Friday. The situation was temporary only, and did not result in delayed delivery to addressees under the projected plan. It was corrected promptly, and as other problems develop, schedules and trip loadings are adjusted accordingly.

Normally, in the initial phase of a substantially new operation several days are required before the operation is properly implemented. The new operation will result in improved service throughout the region at substantial savings.

Senator Randolph: I am not attempting to discuss the movement of the mail and I certainly am not critical, but I did send a letter a week ago Wednesday to Mountain Lake Park, Md., which is on the mainline of the B. & O. approximately 2 miles east of Oakland, Md.

That letter was received on Monday and it was mailed in Washington on Wednesday.

The Postmaster General: I would say that letter received pretty lousy service.

Senator Randolph: This concerned a specific case, a letter I sent, and I know the time of its being received. That is why I just thought that in these times when certainly there is an—a transition and apparently the increasing volume of the mail—I am not sure.

The Postmaster General: In the first accounting period of this fiscal year, we have gotten a fantastic increase in volume, I think it was 5.6 percent as compared to the 2.8 percent previously. I don't know who is mailing all of the letters but they are coming.

Obviously this is one factor here but I can't comment in any detail until I get a report on it.

The Chairman: Going back to some of the fringe benefits, I am still not clear, for example, about the Sunday work rates. At present all employees of the Post Office are eligible and can be put on a Sunday schedule as part of their regular week; therefore they get no time and a half and no premium pay benefit, but they do get compensatory time off for the over 5 days a week that they work?

The Postmaster General: That is right. The regular who works on Sunday gets comp time within 5 days.

The Chairman: It is customary for all employees of the Post Office to get some comp time rather than premium overtime?

The Postmaster General: The subs and the temps was paid for any hours they work.

The Chairman: They work anytime at a straight rate and I think you have explained that in here. But their pay scales takes into consideration now the fact that they will be doing some work on holidays and Sundays.

The Postmaster General: Actually their hourly rate includes a consideration of eight holidays pay.

The Chairman: Opposed to the premium pay for Sunday work at the rate of time and a half?

The Postmaster General: Unless the Sunday work or the Saturday work is the sixth or seventh day; simply because we regard the postal service, and all employees who come into the postal service obviously understood this, is a 7-day operation.

The Chairman: Obviously mail has to move on Sunday or any other day or you get poorer service than the example mentioned by Senator Randolph.

What is the practice in industry? You say we have not found this kind of payment in industry and then you point out that 15 percent, I believe, of the union contracts provided premium pay for workers for whom Sunday was a regularly scheduled workday. Do your union contracts involve business operations, where Sunday would be a normally prescribed working day for the company?

The Postmaster General: That 15 percent refers to those people who are regularly scheduled to work on Sunday so obviously it would be a normal operating day, otherwise they would not be regularly scheduled. So the 15 percent is comparable to our regulars.

The Chairman: You say 15 percent of the union contracts. There would generally not be much problem with Ford Motor or General Motors on a Sunday but in transportation or trucking where Sunday is just another working day in which goods have to be moved—I am trying to get at what the 15 percent refers to. Does it refer to 15 percent of all contracts, or 15 percent of contracts with firms who have to move things and keep Sunday as an operating day?

The Postmaster General: Mr. Block made a study of this.

Mr. Block: Fifteen percent refers to all firms that have Sunday as a regularly scheduled day. For example, United States Steel pays 25 percent differential for Sunday work even though it is a regularly scheduled workday.

All those industries found by the Bureau of Labor Statistics who have Sunday as a regularly scheduled workday would be included in the 15 percent.

The Chairman: That would provide for the 15 percent premium pay.

Mr. Block: Yes, sir; 15 percent of the contracts.

Mr. Murphy: However, most of them do not pay a full time and a half rate. They rarely pay full time and a half. I think this also marks a departure in the Federal Government by designating a special day for a pay differential.

It implies that Government is not a 7-day function and it implies specifically that the postal service is not a 7-day function which I would think we would want to thing about very carefully before making a final determination.

The Chairman: On the chart 6(b) you show that almost all industries are on an 8-hour day and a 40-hour week excepting the postal field service, and the postal field service regulars; is that right?

The Postmaster General: As far as the 40-hour week, yes. As far as the time and a half over eight, those operating under the Walsh-Healey and the Work Hours Standards Act are paid. Those working under the Fair Labor Standards Act are not and neither are the Classification Act employees.

The Chairman: Most all of the other standards——

The Postmaster General: I might say our postal regulars are paid time and a half for all work over 8 hours a day.

The Chairman: This would affect who then?

The Postmaster General: Subs and temps. For regulars we would pay overtime instead of compensatory time for work on a six or seven day.

The Chairman: You have in this last figure overtime for substitutes, elimination of compensatory time in your first table, and on the second table you have overtime for regulars, $26 million, for supervisors, $2.2 million.

Mr. Murphy: It is another way of breaking it down. Actually the overtime cost for regulars is for the elimination of compensatory time on Saturdays, $26 million, and the overtime cost for subs is overtime over 40 hours plus overtime for over 8 in a day as provided in the House bill.

That is what that figure indicates. The supervisors currently are not given overtime, they are given compensatory time and we would propose here giving us the option of paying supervisors either the premium pay or the compensatory time.

The Chairman: Would that be a premium compensatory time?

The Postmaster General: All compensatory time is straight time hour for hour. So when we eliminate for

our regular employees compensatory time for Saturdays and Sundays as we are proposing here, what we would be saying in effect if it is the sixth and seventh day they would get time and a half pay rather than hour for hour compensatory time. That is our proposal.

* * * * * * *

I would like to include at this point the letter and sampling from Mr. Wirtz.

(The exhibit is as follows:)

U. S. Department of Labor,
Office of the Secretary,
Washington, September 15, 1965.

Hon. Mike Monroney,
U. S. Senate, Washington, D. C.

Dear Senator Monroney: As promised in my recent letter, in response to your inquiry of September 1, I am enclosing a tabulation of weekend pay practices stipulated in selected major agreements for the following industries: chemicals, petroleum, primary metals, communications, utilities, trucking, local transit and automobiles.

Since the tabulations cover only a small number of companies in each industry, they should not be considered as a general measure of the prevalence of a particular practice. That is, the practices followed by these companies may not necessarily extend throughout the rest of the industry. The companies were selected mainly on the basis of size.

I would like to note that in addition to extra payments for Saturday, Sunday, or the sixth and seventh day most agreements also provide for premium pay for work after 8 hours daily, after 40 hours weekly, and in a number of cases, for all work outside of regularly scheduled hours.

Sincerely,

W. Willard Wirtz,
Secretary of Labor.

Company and location	Union	Number of workers	Expiration date	Local Transit: Saturday: Non-scheduled	Local Transit: Saturday: scheduled	Local Transit: Sunday: Non-scheduled	Local Transit: Sunday: Scheduled	6th day: 6th day of workweek	6th day: 6th day worked	7th day: 7th day of workweek	7th day: 7th day worked	Remarks
Chicago Transit Authority, Chicago, Ill.	Street, Electric	8,800	November 1965.									Overtime pay, 1½ times.
Cleveland Transit System, Cleveland, Ohio	do	2,350	June 1965			1½ times (non-operating employees only).	1½ times (non-operating employees only).		1½ times	1½ times if 5 days worked.		
Metropolitan Transit Authority, Boston, Mass.	do	4,400	December 1965.									Do.
Philadelphia Transportation Co., Philadelphia	Transport Workers	5,000	January 1965						1½ times	1½ times if 5 days worked.		
Public Service Coordinated Transport, New Jersey.	Street, Electric	5,000	February 1966	1½ times		1½ times		1½ times		1½ times		
Automobiles												
Chrysler Corp., interstate	Auto Workers	81,600	September 1967.	1½ times		2 times	1¼ times	1½ times			2 times	
Ford Motor Co., interstate	do	140,000	do	do		do	do		1½ times	1¼ times	do	1¼ times for work on the 7th workday in calendar week; 2 times if 7th day work results from employee being required to work on scheduled offday(s).
General Motors Corp., interstate.	do	318,000	do	do	10 cents an hour extra for all hours in workweek which involve work on Saturday and Sunday.	do	10 cents an hour extra for all hours in workweek which involve work on Saturday and Sunday.		do		do	
Utilities: Electric and Gas												
Boston Edison Co., Massachusetts.	Auto Workers	2,050	April 1965				1¼ times	1½ times		1½ times	2 times	
Commonwealth Edison Co., intrastate, Illinois.	Electrical (IBEW)	3,250	March 1966			1½ times	do	do	1½ times		do	
Consolidated Edison, New York, N. Y.	Utility Workers	21,000	November 1965.				do					
Georgia Power Co., Atlanta, Ga.	Electrical (IBEW)	3,100	June 1965			1½ times						
Niagara Mohawk Power Corp., Syracuse, N.Y.	do	6,900	May 1965			2 times	12 cents per hour extra.	1½ times		2 times		12 cents per hour extra for 40 hour week of 6 days.
Pacific Gas & Electric Co., San Francisco, Calif.	do	11,700	June 1966					do		1½ times		
Public Service Electric & Gas Co., Newark, N. J.	do	4,900	May 1967					do		2 times		
Southern California Edison Co., Los Angeles, Calif.	do	4,200	December 1966.	1½ times		1½ times		do		1½ times	1½ times	
Southern California Gas Co., Los Angeles, Calif.	Utility Workers	3,200	March 1966			do	25 cents per hour extra.	do		do		15 cents per hour extra for weeks with split days off.
Union Electric, St. Louis, Mo.	Electrical (IBEW)	1,900	June 1965			2 times	1¼ times			2 times		

Company and location	Union	Number of workers	Expiration date	Petroleum								Remarks
				Saturday		Sunday		6th day		7th day		
				Non-Scheduled	Scheduled	Non-scheduled	Scheduled	6th day of workweek	6th day worked	7th day of workweek	7th day worked	
American Oil Co., Whiting, Ind.	Petroleum Workers (independent).	3,650	Aug. 1966						1½ times		2 times	
Humble Oil & Refining Co., Baton Rouge, La.	Independent Industrial Workers' Association.	2,950	April 1966								do	
Gulf Oil Corp., Port Arthur, Tex.	Oil, Chemical	2,850	June 1966			1½ times						
Richfield Oil Corp., Los Angeles, Calif.	do	2,050	do	1½ times		do		1½ times		1½ times		1½ times for work on regular day off when requested by employer.
				Primary Metals								
Shell Oil Co., Houston, Tex.	do	1,750	August 1966						1½ times		2 times	
Allegheny Ludlum Steel Corp., Pittsburgh, Pa.	Steelworkers	9,000	Apr. 1965			1¼ to 1½ times (1½ times after 5 days' work).	1¼ times		1½ times	1½ times after 5 days' work.		
Aluminum Co. of America, interstate.	do	11,600	May 1965			1½ to 2 times (2 times if 7th day worked).	1½ times		do		2 times	
Armco Steel Corp., Middletown, Ohio.	do	12,500	Apr. 1965			1¼ to 1⅓ times (1⅓ times after 5 days' work).	1¼ times		do	1½ times after 5 days' work.		
Bethlehem Steel Co., interstate.	do	74,500	do			do	do		do		do	do
Inland Steel Co., Illinois and Indiana.	do	17,000	do			do	do		do		do	do
Kaiser Steel, Fontana, Calif.	do	6,000	Dec. 1968			do	do		do		do	do
United States Steel, interstate.	do	110,000	Apr. 1965			do	do		do		do	do

Chemicals and Allied Products

Company and location	Union	Number of workers	Expiration date	Saturday		Sunday		6th day		7th day		Remarks
				Non-scheduled	Scheduled	Non-scheduled	Scheduled	6th day of workweek	6th day worked	7th day of workweek	7th day worked	
Union Carbide Corp., Chemicals Division, Texas City, Tex.	Texas Metal Trades Council.	1,750	June 19, 1967						1½ times		2 times	
Olin Mathieson Chemical Corp., E. R. Squibb & Sons Division, New Brunswick, N. J.	Oil, Chemical	1,050	May 1967			1½ to 2 times.	1½ times	1½ times		2 times		Sunday, 1½ times minimum; 2 times if 2d rest day. (7th day of workweek 2 times.)
Lever Bros. Co., interstate	Chemical Workers	2,500	March 1966	1½ times								
American Cyanamid Co., Bound Brook, N. J.	do	1,800	December 1966.		50 cents an hour extra.	2 times do	90 cents an hour extra.					Sunday work, 90 cents an hour plus any other premium or overtime rate due, with maximum 2 times; if over 40 hour week, 1½ times plus 90 cents an hour extra; if Sunday is 7th consecutive day, 2 times instead of 90 cents an hour.
American Enka Corp., Enka, N. C.	United Textile Workers.	3,400	May 1965								2 times	
FMC Corp., American Viscose Fibers Division, Virginia, Pennsylvania, and West Virginia.	Textile Workers Union of America.	7,100	June 1965					1½ times		1½ times		1½ times for work on scheduled "break-days."
Celanese Corp. of America, Celanese Fibers Co. Division, Celco plant, Narrows, Va.	District 50, UMW (independent).	2,000	February 1967					do		do	2 times	1½ times on scheduled day off.
Colgate-Palmolive Co., Jersey City, N. J.	Employees Association, Inc., of Colgate-Palmolive Co. (independent).	2,050	December 1965.	1½ times		2 times						
Dow Chemical Co., Midland, Mich.	District 50, UMW (independent).	6,600	March 1968	do	2-rate step above regular rate.	do	2-rate step above regular rate.	1½ times		2 times		If schedule requires employee to work Saturday or Sunday at least once every 3 weeks, he is paid 2 rate steps above regular rate for entire schedule. If less frequently, he is paid the above premium rate only for the week in which such Saturday or Sunday work is scheduled.
General Electric Co., Hanford Atomic Products Operations, Richland, Wash.	Metal Trades Council.		June 1967					do		do		
Hercules Powder Co., Radford, Va.	Oil, Chemical	3,000	May 1965								2 times	
Monsanto Chemical Co., Plastics Division, Springfield, Mass.	IUE	1,700	July 1965	50 cents an hour extra minimum.	50 cents an hour extra minimum.	1½ to 2 times for Sunday as such (2 times if 7th day worked).	1½ times	1½ times if day of rest.	1½ times	1½ times if day of rest.	do	1½ times for Sunday as such. 1½ times 6th day worked; 2 times 7th day worked. 1½ times if requested to work on "day of rest." 50 cents an hour extra for Saturday as such, unless it falls under a premium pay classification.
Union Carbide Corp., Nucear Division, Oak Ridge, Tenn.	Atomic Trades and Labor Council.	3,300	April 1968		15 cents an hour extra.		25 cents an hour extra.		do		do	
Western Electric Corp., Sandia Corp. Division, Albuquerque, N. Mex.	Metal Trades Council.	1,200	July 1965	1½ times		2 times		1½ times		2 times		
Celanese Corp. of America, Celanese Fibers Co. Division, Amcelle plant, Cumberland, Md.	Textile Workers Union of America.	2,250	April 1965						1½ times		2 times	

EXCERPTS FROM PLAINTIFF'S EXHIBIT R.

Calendar No. 896

89th Congress
1st Session

Senate

Report
No. 910

FEDERAL EMPLOYEES SALARY LEGISLATION

October 18, 1965.—Ordered to be printed

Filed under authority of the order of the Senate of October 18, 1965

Mr. Monroney, from the Committee on Post Office and Civil Service, submitted the following

Report

Together with

Individual and Minority Views

[To accompany H.R. 10281]

The Committee on Post Office and Civil Service, to which was referred the bill (H.R. 10281) to adjust the rates of basic compensation of certain officers and employees in the Federal Government, to establish the Federal Salary Review Commission, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

Amendment

The committee has stricken out all language after the enacting clause and inserted a new text to provide for three broad changes in H.R. 10281 as it was referred: (1) reduction of the 1965 increases from 4 percent to 3.6 percent; (2) elimination of the 1966 second-stage increase in Federal salaries; (3) reduction in certain fringe benefit costs and applications, and the elimination of certain

other provisions revising present law. Appendix A of this report provides graphic illustration of the cost difference between the House-passed bill and the committee amendment. Briefly expressed, the administration recommendations on pay, severance pay, and postal overtime pay cost $520 million annually; H.R. 10281 as referred costs $755 million annually for the first stage of the pay increase; the committee amendment costs $641.5 million annually.

Other Major Features of the Senate Amendment

Acceptable level of competence.—The 1962 Salary Reform Act added to the law a requirement that an employee perform at an acceptable level of competence. It meant that an employee whose work is marginal but not so poor as to justify his dismissal, could be disciplined by denying him a within-grade step increase until his work improved.

The 1962 act provided for a redetermination of that decision within the employee's agency, but provided no right of appeal to the Civil Service Commission. Section 3 of the Senate amendment changes the 1962 law so that any employee whose work is rated to be of an unacceptable level of competence may ask for a redetermination of that decision within his own agency, under uniform procedures promulgated by the Civil Service Commission and applicable to all agencies. In the event the redetermination is adverse to the employee, he may in all cases appeal to the Commission. If either redetermination or the appeal results in a decision favoring the employee, the decision will be retroactive. Because many laws relating to personnel administration do not apply to the Library of Congress, which is an arm of the Congress, the new law on appellate rights shall not apply to the Library.

Postal overtime and holiday pay.—The bill revises and progressively modernizes the present law on overtime and

holiday pay for postal employees. Unlike many other agencies of the Government, the postal service is a 7-day, 24-hour operation. The present volume of mail is above 72 billion pieces annually. It will continue to rise.

Overtime work is simply mandatory under present conditions. The limitation upon funds available for additional career manpower requires the use of temporary substitutes. Until now, no substitute employee has been paid overtime compensation in any case, and no regular employee has been paid for working a sixth or seventh day in the workweek. The Post Office Department has recognized this inequity. The Fair Labor Standards Act of 1938 established a basic overtime program applicable to private enterprise, and the Government is long overdue in fulfilling the requirements which Federal law requires of private industry. Appendix B explains the changes to be brought about by the enactment of H.R. 10281.

Basically, regular employees in salary levels PFS-7 and below will be paid for any overtime work (regular employes have an advance-scheduled basic workweek of five 8-hour days). Regular employees in PFS-8 and above will either be paid for overtime work or given compensatory time off equal to the number of overtime hours worked. Substitute employees, whose workweek depends on the workload, will be paid for all time in excess of 40 hours a week. Holiday pay, now within the discretion of the Postmaster General and inapplicable to employees in salary level PFS-8 and above, will be paid in all cases to those in PFS-7 and below, and will either be paid or compensatory time off will be given to those in PFS-8 and above. A special premium pay of 25 percent of the hourly rate will be paid to regular employees whose 5-day work schedule includes an 8-hour shift any part of which occurs on Sunday. For that full 8-hour shift, alone, the employee will receive the extra compensation.

The committee has given careful consideration to the problem of scheduling employees for work in the postal field service. As referred, H.R. 10281 gave substantial preference to annual rate regular employees by establishing a basic workweek exclusive of Saturday and Sunday. The committee amendment has modified this in view of its belief that one of the most important factors to be considered is the Post Office Department's obligation to deliver the mail.

Restrictions upon management, in a public service which must utilize its best and most experienced personnel for maximum efficiency and service, will result in poor service to the American public and a poor image for the postal service and all of its employees. Nonetheless, the committee recognizes and strongly supports the rights of employees and the policy established by Executive Order 10988. Therefore, although the Postmaster General shall have no statutory restriction upon scheduling employees to any 5-day workweek the committee has encouraged the Department to give preference to the maximum extent practicable, to senior regular employees for a basic workweek of Monday through Friday.

* * * * * * *

Changes in Existing Law

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

* * * * * * *

Hours of Work and Overtime

[§ 3571. Maximum hours of work.

[Except as otherwise provided in this title, employees may not be required to work more than eight hours a day.

The work schedule of employees shall be regulated so that the eight hours of service does not extend over a longer period than ten consecutive hours.]

§ 3571. Maximum hours of work

(a) A basic workweek is established for all postal field service employees consisting of five eight-hour days. The work schedule of employees shall be regulated so that the eight hours of service does not extend over a longer period than ten consecutive hours.

(b) The Postmaster General shall establish work schedules in advance for annual rate regular employees consisting of five eight-hour days in each week.

(c) Except for emergencies as determined by the Postmaster General, the hours of service of any employee shall not extend over a longer period than twelve consecutive hours, and no employee may be required to work more than twelve hours in one day.

(d) To the maximum extent practicable, senior regular employees shall be assigned to a basic workweek Monday through Friday, inclusive, except for those who express a preference for another basic workweek.

[§ 3573. Compensatory time, overtime, and holidays.

[In emergencies or if the needs of the service require, the Postmaster General may require employees to work more than eight hours in one day, or on Saturdays, Sundays, or holidays. For that service he shall grant employees in the "PFS" Schedule compensatory time or pay them overtime compensation under the following rules:

[(1) Each employee in or below salary level PFS-7 shall be paid for all work in excess of eight hours in one day at the rate of 150 per centum of his hourly basic compensation.

[(2) (A) Each employee in or below salary level PFS-7 who performs work on Saturdays or Sundays shall, under regulations prescribed by the Postmaster General, be granted compensatory time in an amount equal to the excess time worked within five working days, except that, in lieu of such compensatory time, the Postmaster General may, if the exigencies of the service require, authorize him to be paid, for work performed on Saturdays and Sundays during the month of December, at the rate of 150 per centum of his hourly basic compensation.

[(B) If the work performed by such employees on Saturdays and Sundays is less than eight hours, such service, in the discretion of the Postmaster General may be carried forward and combined with similar service performed on other Saturdays and Sundays. The employees may be allowed compensatory time for combined service or any part thereof at any time, except that, whenever at least eight hours of such service has been accumulated, the employees shall be allowed eight hours compensatory time on one day within five working days next succeeding the Saturday or Sunday on which the total accumulated service was at least eight hours.

[(3) For time worked on a day referred to as a holiday in section 87b of title 5, or on a day designated by Executive order as a holiday for Federal employees generally, each employee in or below salary level PFS-7, under regulations prescribed by the Postmaster General, shall either be granted compensatory time in an amount equal to the time worked within thirty working days, or be paid premium compensation at a rate equal to his hourly basic compensation for the time so worked. For work performed on Christmas Day, premium compensation shall be

paid at a rate equal to 150 per centum of the employee's hourly basic compensation.

[(4) Each employee in or above salary level PFS-8 who performs overtime or holiday work as described in this section, under regulations prescribed by the Postmaster General, shall be granted compensatory time in an amount equal to the overtime or holiday work.

[(5) If an employee is entitled under this section to unused compensatory time at the time of his death, the Postmaster General shall pay at the rate prescribed in this section, but not less than a sum equal to the employee's hourly basic compensation, for each hour of such unused compensatory time to the person or persons surviving at the date of such employee's death. Such payment shall be made in the order of precedence prescribed in the first section of the Act of August 3, 1950 (5 U.S.C. 61f), and shall be a bar to recovery by any other person of amounts so paid.]

§ 3573. Compensatory time, overtime, and holidays.

(a) In emergencies or if the needs of the service require, the Postmaster General may require employees to perform overtime work or to work on holidays. Overtime work is any work officially ordered or approved which is performed by—

(1) an annual rate regular employee in excess of his regular work schedule.

(2) an hourly rate regular employee in excess of eight hours in a day or forty hours in a week, and

(3) a substitute employee in excess of forty hours in a week.

The Postmaster General shall determine the day and week used in computing overtime work.

(b) For each hour of overtime work the Postmaster General shall compensate an employee in the "PFS" Schedule as follows:

(1) He shall pay each employee in or below salary level PFS-7 compensation at the rate of 150 per centum of the hourly rate of basic compensation for his level and step computed by dividing the scheduled annual rate of basic compensation by two thousand and eighty.

(2) He shall grant each employee in or above salary level PFS-8 compensatory time equal to the overtime worked, or in his discretion in lieu thereof pay such employee compensation at the rate of 150 per centum of the hourly rate of basic compensation of the employee or of the hourly rate of the basic compensation for the highest step of salary level PFS-7, whichever is the lesser.

(c) For officially ordered or approved time worked on a day referred to as a holiday in the Act of December 26, 1941 (55 Stat. 862; 5 U.S.C. 87b), or on a day designated by Executive order as a holiday for Federal employees, under regulations prescribed by the Postmaster General, an employee in the PFS schedule shall receive extra compensation, in addition to any other compensation provided for by law, as follows:

(1) Each regular employee in or below salary level PFS-7 shall be paid extra compensation at the rate of 100 per centum of the hourly rate of basic compensation for his level and step computed by dividing the scheduled annual rate of basic compensation by two thousand and eighty.

(2) Each regular employee in or above salary level PFS-8 shall be granted compensatory time in an amount equal to the time worked on such holiday within thirty working days thereafter or, in the discretion of the Postmaster General, in lieu thereof

shall be paid extra compensation for the time so worked at the rate of 100 per centum of the hourly rate of basic compensation for his level and step computed by dividing the scheduled annual rate of basic compensation by two thousand and eighty.

(3) For work performed on Christmas Day (A) each regular employee shall be paid extra compensation at the rate of 150 per centum of the hourly rate of basic compensation for his level and step, computed by dividing the scheduled annual rate of basic compensation by two thousand and eighty, and (B) each substitute employee shall be paid extra compensation at the rate of 50 per centum of the hourly rate of basic compensation for his level and step.

(d) The Postmaster General shall establish conditions for the use of compensatory time earned and the payment of compensation for unused compensatory time.

(e) Each regular employee whose regular work schedule includes an eight-hour period of service any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday shall be paid extra compensation at the rate of 25 per centum of his hourly rate of basic compensation for each hour of work performed during that eight-hour period of service.

(f) If an employee is entitled under this section to unused compensatory time at the time of his death, the Postmaster General shall pay at the rate prescribed in this section, but not less than a sum equal to the employee's hourly basic compensation, for each hour of such unused compensatory time to the person or persons surviving at the date of such employee's death. Such payment shall be made in the order of precedence prescribed in the first section of the Act of August 3, 1950 (5 U.S.C. 61f), and shall be a bar to recovery by any other persons of amounts so paid.

(g) Notwithstanding any provision of this section other than subsection (f), no employee shall be paid overtime or extra compensation for a pay period which when added to his basic compensation for the pay period exceeds one twenty-sixth of the annual rate of basic compensation for the highest step of salary level PFS-17.

(h) For the purposes of this section and section 3571 of this title—

(1) "Annual rate regular employee" means an employee for whom the Postmaster General has established a regular work schedule consisting of five eight-hour days in accordance with section 3571 of this title.

(2) "Hourly rate regular employee" means an employee for whom the Postmaster General has established a regular work schedule consisting of not more than forty hours a week.

(3) "Substitute employee" means an employee for whom the Postmaster General has not established a regular work schedule.

* * * * * * *

DEFENDANT'S EXHIBIT NO. 1.

Post Office Department
Washington

I certify that the annexed papers are true copies of the documents on file in this Department.

In testimony whereof I have hereto set my hand, and caused the seal of the Post Office Department to be affixed, at the City of Washington, the day and year above written.

TIMOTHY J. MAY,
General Counsel.

BAR:GA:GSMCD:bds
Dec. 21, 1966.

Mr. Douglas E. Groettum
11214 Terrace Road, N. E.
Minneapolis, Minnesota 55433.

Dear Mr. Groettum:

The Board of Appeals and Review has carefully reviewed your appeal from the decision of the Director, Minneapolis Region, to deny your grievance in which you objected to being rescheduled to a basic workweek other than the one you received by bid.

In your initial grievance and subsequent appeals to the Regional Director and the Board, you contended the temporary change effected in your schedule for the week of June 18 through June 24, 1966, was in violation of the provisions set forth in Section 5 of Public Law 89-301. In your stated opinion, the language of the aforementioned law prohibited the rescheduling of a clerk's basic workweek except by mutual agreement between the clerk and local office. As corrective action, you requested that the Minneapolis, Minnesota, Post Office be required to fully implement the instructions in Postal Bulletin 20520, in order to be in compliance with Public Law 89-301, and also requested that the office be immediately enjoined from the temporary rescheduling of basic workweeks.

The Board has given careful consideration to the total evidence presented with your case. This evidence reveals, as you have stated, that the rescheduling was done on a temporary basis. The record also shows that the Regional Director, in his decision dated August 2, 1966, advised you of the reasons why the rescheduling was considered to be necessary. He explained that scheduled vacations and personal emergencies depleted the work force to the extent that approximately two (2) per cent of the employes, including you, had to be rescheduled in order to insure adequate staffing of the office.

We do not find the rescheduling of approximately 2 per cent of the employees to be either excessive or unjustified. Nor do we find that in rescheduling you, the Postmaster violated any laws or regulations. You were advised of the change in your schedule in accordance with regulations and the change was not in violation of provisions set forth in Public Law 89-301, as you allege. There is no provision in the Postal Bulletin, to which you have made reference throughout your case, which prohibits the Postmaster from rescheduling an employee when service needs necessitate such action, provided he advises the employee within the time limit specified by regulations.

In view of the foregoing, the Board sustains the decision of the Regional Director and denies your appeal.

Mr. Francis S. Filbey, Administrative Aide, United Federation of Postal Clerks, appeared before the Board in your behalf.

Sincerely yours,

(signed) ALFRED J. DUMAS
Chairman, BAR
ALFRED J. DUMAS, Chairman

(signed) EVA M. TUGGLE,
Member, BAR
EVA M. TUGGLE, Member

(signed) G. WESLEY ALLEN,
Member, BAR
G. WESLEY ALLEN, Member

(Absent)
EMMETT E. COOPER, JR.,
Member

Board of Appeals and Review.

cc: Regional Director
Postmaster
FRANCIS S. FILBEY
WILLIAM J. CAHOW.

United Federation of Postal Clerks, Local No. 125.

Minneapolis, Minnesota 55440.

William J. Cahow
President, Local 125

August 12, 1966

Board of Appeals and Review
Bureau of Personnel
Post Office Department
Washington D. C. 20260

Appeal From the Regional Director's Decision Concerning Grievant Douglas E. Groettum.

Basically, Local 125 contests the ruling of the Minneapolis Regional Director on Clerk Groettum's request that he not be re-scheduled on a unilateral, temporary basis for the same reason we took exception to the Minneapolis Postmaster's decision. Namely, the lack of visible statutory authority that would legalize the nullification of basic workweeks established by Public Law 89-301 and implemented by Postal Bulletin 20520.

The specific instance in this case is the temporary re-scheduling of Mr. Groettum's basic workweek of Monday through Friday that occurred during the service week beginning June 18, 1966 when the grievant was unilaterally assigned Saturday, June 18, and Sunday, June 19, as service days with Monday, June 20, and Friday, June 24 as new off days.

It is difficult to relate the upholding action by the Minneapolis Regional Director of the Minneapolis Post Office Installation Head's decision to the central point of the grievance filed by Douglas Groettum or to the additional material submitted at the time of appeal to the Regional Director. The original grievance stated that (temporary) re-scheduling of a clerk's basic workweek

was not compatible with P. L. 89-301. The additional material submitted for the appeal reinforced that contention by specific reference to P. L. 89-301.

The Regional Director's decision blandly states, "While it is expected that the properly established basic workweek will be honored, to the extent practicable, for each employee, when conditions arise which require the re-scheduling of employees to meet the needs of the service, such re-scheduling must then be done."

Because such a blanket right to temporarily re-schedule basic workweeks (without payment of overtime) was pointedly denied in the grievance and its appeal, Local 125 feels the Regional Director's decision is deficient since it fails to cite the authority for the act in question. We have diligently searched P. L. 89-301 for such authority. We have not found it yet.

At this time the crucial second paragraph of the Regional Director's decision (hereafter: Decision) must be examined and interpreted as best Local 125 can. It says—as we understand it—that postal clerks' basic workweeks, once established, will be honored only "to the extent practicable" and that, in turn, "the needs of the service" will determine the "extent practicable."

Now the possibility exists that the Regional Director has addressed himself to the legality of the Minneapolis Post Office's actions. Perhaps he interprets section 3571 (d) of P. L. 89-301 to mean that each and every service week of the calendar year the Postmaster can, at his discretion, decide the exact number of employees who will be allowed to work the Monday through Friday basic workweek or other basic workweeks during the following service week.

If this is the meaning of the second paragraph, then the Regional Director must be congratulated on a highly original interpretation of P. L. 89-301. However, Local

125 cannot square such an interpretation with section 3573 which omits all reference to compensatory time below PFS-8. (Now slightly modified by P. L. 89-504.) Indeed, as was shown in the appeal, the new section 3573 actually deleted the whole concept of compensatory time for PFS-7 and below that was contained in the old section 3573.

Local 125 has labored long and hard to demonstrate that the practice of re-scheduling service days in the basic workweek results in a situation which is identical to the former compensatory time system now abolished. We can only conclude that the practice of giving clerks compensatory time **by any name** is contrary to the letter and intent of P. L. 89-301 which makes overtime payment mandatory for any duty performed outside of the exact basic workweek received by seniority bid.

It is painfully obvious to Local 125 that once the principle is asserted and the practice established of temporarily re-scheduling clerk's basic workweeks on a unilateral basis, there will be no end to the amputations performed by the Minneapolis Post Office on workweeks to make them fit that procrustean bed, "the needs of the service."

Curiously the Decision says, "The only alternative would be for the Postmaster to cancel scheduled annual leave or to refuse emergency annual leave." What is curious about this is that the appeal made no less than seven references to payment of overtime. Overtime was, and is the third, and only practical alternative.

Under the policy of strict and arbitrary limitation of overtime proclaimed in Postal Bulletin 20537, Local 125 thinks, the concept of "the needs of the service" will necessitate constant and continuous temporary re-scheduling of established basic workweeks. In this light it will be seen that the 2% re-scheduling figure given for prime

vacation time could even increase as the Summer mail slump ends and the seasonal assistants are released. Remember the Postmaster also claimed the right to reschedule because of "unusually heavy mail conditions."

We cannot understand how a relatively fixed number of clerks can handle a variable mail volume without overtime utilization and still give non-shoddy service. After all, you can't have a crew large enough to handle peak loads in the post office on hand in a slack period, so it seems only logical (in our opinion) to have a smaller crew supplemented by the judicious use of overtime. If the Minneapolis Post Office tries to work the mail without a proper overtime allotment, it must engage in an endless juggling act, both of basic workweeks and starting times, to the detriment of the clerk, his family, and, inevitably, the postal service.

The Decision attempts to dismiss the problem of rescheduling when it claims only 2% of the clerks were effected during the prime vacation period. This figure may or may not be correct; Local 125 has no way of knowing. What we do know is that the likelihood of virtually "permanent" temporary re-scheduling throughout the year exists for clerks in the danger zone much to their dismay and hardship. A yearly average of 2% rescheduled would be excessive in Local 125's thinking because this figure would represent not only a sacrifice of the clerk's best interests and well-being, but a surrender of rights guaranteed by P. L. 89-301.

Postal Bulletin 20520 establishes only three types of basic workweeks. Clerk Groettum received by proper bidding procedure one of "those which begin on Monday and run through Friday, with Saturday and Sunday as fixed days off." It can be readily seen there is a conflict between the Decision and the sections of Bulletin 20520 concerning the "Establishment and Posting of Basic Workweek Assignments."

There is no provision in the Bulletin for a postmaster to alter workweeks on a unilateral, temporary basis. Such an "implementation" of P. L. 89-301 as envisioned in the Decision makes that law almost meaningless and Local 125, for one, would hesitate to tell the Congress or the Courts of the United States of America that a lengthy law had been passed that was substantially without meaning.

We would also hesitate to tell the Post Office Department that it had printed a bulletin that had no meaning, but if "fixed days off" can be twisted by the Regional Director to mean "subject to change or fluctuation," then Postal Bulletin 20520 is essentially meaningless.

The Minneapolis Post Office and Regional Director act as if by no longer calling compensatory time, "compensatory time" but, instead, calling it "off days," they are complying with P. L. 89-301. They are wrong. There is no way to bridge the gap between the Decision and our understanding of Bulletin 20520. There is certainly no way to bridge the gulf between the Decision and P. L. 89-301.

Local 125 respectfully requests the Post Office Department to ask the Regional Director to require the Minneapolis Post Office to fully and accurately implement Postal Bulletin 20520 immediately so the Office will be in compliance with P. L. 89-301.

Sincerely and respectfully,

/s/ WILLIAM J. CAHOW,
WILLIAM J. CAHOW,
President, Local 125.

31-ASR:JPL:cmk

August 2, 1966

Certified—Return
Receipt Requested

Mr. Douglas E. Groettum
Incoming Mails Division
Main Post Office
Minneapolis, Minnesota 55401

Dear Mr. Groettum:

This is a letter of decision in the Grievance Appeal which was submitted in your behalf on July 1, 1966. The substance of your grievance is that the Postmaster rescheduled you to work a basic workweek other than your established workweek during the week of June 18 through June 24, 1966.

While it is expected that the properly established basic workweek will be honored, to the extent practicable, for each employee, when conditions arise which require the rescheduling of employees to meet the needs of the service, such rescheduling must then be done.

During the week in question, the absences in scheduled work crews in the clerk craft at the Minneapolis Post Office for Saturday, June 18, 1966, were as follows:

39—annual leave
3—extended sick leave
3—emergency annual leave
8—details to other units

Three of these absences were people assigned to Zone 17, which is the work zone to which you were assigned.

The only alternative would be for the Postmaster to cancel scheduled annual leave or to refuse emergency annual leave.

I concur with the Postmaster that it is more desirable to reschedule employees than to cancel vacation leave which has been scheduled far in advance, or to deny leave under conditions of personal emergency.

There is no evidence to indicate that you were rescheduled unjustly, or that you were rescheduled for reasons other than to meet service needs. The records show that approximately 2% of clerical employees at the Minneapolis Post Office have been rescheduled during the choice vacation period. This does not appear to be excessive.

For these reasons, it is my decision that your grievance appeal be denied.

If you are not satisfied with my decision in this case, you or your representative do have the right to appeal my decision within ten (10) working days from the date of this letter to the Board of Appeals and Review, Bureau of Personnel, Post Office Department, Washington, D. C., 20260. You should furnish me a signed copy of any appeal addressed to the Board of Appeals and Review.

Sincerely yours,

ADRIAN P. WINKEL,
Regional Director.

31-ASR:JPL:emk

cc: Mr. William J. Cahow, Pres., Local 125, UFPC, Main PO, Box 286, Mpls.
√ PM—Mpls., Mn. 55401
RD
Dir., Local Svcs Div
File (2)

United Federation of Postal Clerks, Local No. 125.

Minneapolis, Minnesota 55440

July 1, 1966

Mr. Adrian Winkel
Regional Director
Minneapolis Postal Region
512 Nicollet Avenue
Minneapolis, Minn. 55425

Appeal of Installation Head's Decision on Grievant Douglas E. Groettum

Dear Mr. Winkel:

This is an appeal from the Minneapolis Postmaster's decision under the procedures outlined in the National Agreement, Article IX, Section H. The required information will be found as follows:

(1) See item (a), Sheet A.

(2) See item (b), Sheet A.

(3) See item (c), Sheet A.

(4) See item (d), Sheet A.

(5) See item (e), Sheet A and Sheet B.

(6) See Sheet C.

(7) See Sheets D-1, 2, and 3.

If it is at all possible, Local 125 would like the decision of the Regional Director within the ten days after receipt of the file as specified in Article IX, Section L of the National Agreement.

Sincerely yours,

/s/ WILLIAM J. CAHOW,
WILLIAM J. CAHOW, President.

P. S. Enclosed are other appeals from Postmaster Hogan's decision. The additional material submitted on D-1, 2, and 3, in general, applies to all the grievances.

D-1

Additional Material Pertinent to the Grievance.

Despite the claim of the Minneapolis Postmaster, W. J. Hogan, that the grievance of Douglas E. Groettum is not valid because no law was violated by management, it is the contention of the grievant and Local 125 that Public Law 89-301 was, indeed, violated and, therefore, Mr. Groettum's grievance is perfectly valid.

To support this thesis Local 125 calls the Regional Director's attention to the language of Public Law 89-301, Section 3571:

> (a) A basic workweek is established for all postal field service employees consisting of five eight-hour days.
>
> (b) The postmaster General shall establish work schedules in advance for annual rate regular employees consisting of five eight-hour days in each week.
>
> (c) To the maximum extent practicable, senior regular employees shall be assigned to a basic workweek Monday through Friday, inclusive, except for those who express a preference for another basic workweek.

Clerk Groettum received a basic workweek of Monday through Friday by seniority bid. He was rescheduled by Minneapolis Postal Management to work Saturday, June 18, and Sunday, June 19 without payment of overtime because Monday, June 20 and Friday, June 24 were assigned as his off days.

Local 125's position (substantiated, we hope, by the facts) is that under Section 3571, permanent basic workweeks may be set up by the postmaster but that unilateral temporary rescheduling of clerks' basic workweeks is prohibited by the language of the law.

Thus, the phrase, "basic workweek Monday through Friday" means that once a clerk is assigned to that particular basic workweek he will work that basic workweek each and every week unless he consents to work another basic workweek. The clerk will not be made to work Monday to Friday one week and Saturday, Sunday, Tuesday, Wednesday, and Thursday the next week. If Mr. Groettum's services are needed by the Post Office Department on his regularly scheduled off days he can be required to work overtime.

Further, Local 125 interprets the phrase, "except for those who express a preference for another basic workweek," to mean two things: One, it establishes permanent regular workweeks composed of five days other than Monday through Friday, and, Two, it permits regular basic workweeks to be altered by mutual consent of the regular employee and management.

It is important to remember that Section 3573 (h) 1, defines for the purpose of Section 3573 and Section 3571 an annual rate regular employee as "an employee for whom the Postmaster General has established a regular work schedule consisting of five eight-hour days in accordance with section 3571 of this title." Please note the word is "regular" work schedule; not, irregular.

D-2

Local 125 claims P. L. 89-301 has established permanent (regular) basic workweeks to be received by seniority bid. Local 125 thinks these regular basic workweeks cannot be unilaterally altered on a temporary basis by management without violation of the law.

A comparison of a key section of P. L. 89-301 with the law previously in force is quite revealing. All references to compensatory time for PFS-7 or below contained in the old law have been dropped. Let the deleted section (Old 3573, 2-A) be specifically noted:

> Each employee in or below salary level PFS-7 who performs work on Saturdays or Sundays shall, under regulations prescribed by the Postmaster General, be granted compensatory time in an amount equal to the excess time worked within five working days . . .

Local 125 contends the rescheduling of basic workweeks on a weekly basis is absolutely indistinguishable from the old compensatory time system. There is no longer statutory authority for compensatory time for personnel PFS-7 or below.

For example, when a regular annual rate clerk with a Monday-Friday basic workweek is unilaterally rescheduled to work Saturday and Sunday—normally off days—with the following Monday and Friday as new off days, the situation is precisely the same situation which, under the old law made the employee work Monday through Friday one week, and Saturday and Sunday the next week with two compensatory days off within the next five working days. We must repeat there is no longer any statutory authority for compensatory time to be given to any annual rate regular employee PFS-7 or below. Rescheduling a clerk's basic workweek without his consent forces him to work six or seven days in a seven consecutive day period without payment of overtime. This point will be taken up below.

Fortunately, neither Local 125 nor the Post Office Department need rely on understanding the English language or using logic to determine that the framers of P. L. 89-301 intended to, concurrently, do away with the concept of compensatory time for regular postal clerks and establish a permanent basic workweek. We refer to Calendar No. 896, Report 910, **Federal Employees Salary Legislation** wherein Chairman Monroney of the Committee on Post Office and Civil Service submitted a report excerpts of which follow in quotation marks.

In this report Senator Monroney outlines the changes made in the House of Representative's version of H. R. 10281 by the Senate together with the reasons for said changes. The Senate version of H. R. 10281 passed the house without further revision and is now P. L. 89-301.

The following quotations are virtually self-explanatory in demonstrating the legislative intent behind P. L. 89-301. "Until now . . . no regular employee has been paid for working a sixth or seventh day in the workweek." Under the old compensatory system regular postal clerks were made to work the sixth or seventh day, not for pay, but for time off. The report clearly states a change has been made. However, under the Post Office Department's implementation of the new law the situation is not changed when rescheduling takes place as has been demonstrated above.

D-3

Additionally the report states, "Basically, regular employees in salary levels PFS-7 and below will be paid for any overtime work. . . . Regular employees in PFS-8 and above will either be paid for overtime work or given compensatory time off equal to the number of overtime hours worked." Compensatory time is authorized only for PFS-8 and above.

Then the report refers the reader to Appendix B for an explanation of the changes wrought by the revised H. R. 10281 (P. L. 89-301). A chart reveals that under the subject of regular employees overtime the (then) present law lists "Compensatory time off for Saturday or Sunday work." The new bill (now law) lists "1½ for over 8 hours a day or 40 hours a week" for PFS-7 and "Payment or compensatory time for PFS-8 and above."

Special emphasis was given in the Post Office and Civil Service Committee Report "to the problem of scheduling

employees for work in the postal field service. As referred H. R. 10281 gave substantial preference to annual rate regular employees by establishing a basic workweek exclusive of Saturday and Sunday. The committee amendment has modified this in view of its belief that one of the most important factors to be considered is the Post Office Department's obligation to deliver the mail. . . . Therefore, although the Postmaster General shall have no statutory restriction upon scheduling employees to any 5 day workweek the committee has encouraged the Department to give preference to the maximum extent practicable to senior regular employees for a basic workweek of Monday through Friday."

It is clear to Local 125 that the Senate Committee's objection was not to a fixed five day workweek for regular postal employees but only to a law which gave all regular employees a Monday through Friday workweek that could jeopardize mail service to the American public by preventing any regular annual rate employee from being scheduled regularly for work on Saturdays or Sundays without payment of overtime.

As Local 125 reads the report, the intent of the Committee in framing P. L. 89-301 was simply to let the Postmaster General schedule regular annual rate employees to other permanent five day basic workweeks which would include Saturdays and/or Sundays.

At the same time the Committee urged the Department to schedule by seniority the maximum number of regular employees to a basic workweek of Monday through Friday every week of the year; Not Monday-Friday one workweek and Saturday, Sunday, Tuesday, Wednesday, and Thursday the next.

The only corrective action urged by the grievant and Local 125 in this grievance (and its appeal) is that management immediately stop the temporary rescheduling of

Mr. Groettum's basic workweek received by seniority bid, but in retrospect Mr. Groettum could have claimed overtime pay for the work he performed when temporarily rescheduled on June 18, and June 19.

Sincerely yours,

/s/ WILLIAM J. CAHOW,
WILLIAM J. CAHOW, President.

United States Government.

Memorandum—Post Office Department.

Grievance

Date: June 29, 1966

In Reply
Refer To: WJH:AAF:lrP.O.CL:

W. J. Hogan
Postmaster
Minneapolis, Minnesota 55401

Douglas E. Groettum
Incoming Mails Division
Main Post Office
Minneapolis, Minnesota 55401

Your Reference:

I have studied your written statement of grievance of June 21, 1966 and find that our supervisors have not violated any law, regulation or policy in changing your basic work week prior to the Thursday preceding the week of the scheduled change. Since the Assignment of personnel is not subject to the grievance procedure unless such violation of law or regulation is present, your grievance is not accepted as valid.

Management has the right to direct the work force to assure that mail is promptly and correctly dispatched. This right must include the right to require overtime or to require employees to come to work when asked on days other than their normal work periods. To guarantee

this freedom of scheduling, the National Agreement authorizes the scheduling of the work week by notifying the employee no later that the end of the tour of duty on the preceding Thursday. This rescheduling is done only in individual cases and under unusual circumstances such as unusually heavy mail conditions or a shortage of employees due to the required scheduling of vacations during the prime vacation periods.

You may appeal this decision to the Regional Director, within 5 days, stating whether or not you desire a hearing. Address your appeal to the Regional Director, Post Office Department, Minneapolis Regional Office, 512 Nicollet Avenue, Minneapolis, Minnesota 55425 and send a copy to me so that I can forward the grievance file to him for consideration.

W. J. HOGAN
lr

cc: President L 125

June 21, 1966

Mr. Walter J. Hogan
Postmaster
Minneapolis, Minn. 55401

Dear Mr. Hogan:

This grievance in behalf of Douglas E. Groettum who was rescheduled to a Basic Work Week other than the basic work week he received by seniority bid.

(a) Mr. Groettum's permanent basic work week is: Monday through Friday, hours 6:00 a. to 2:30 p. m. He is a PFS-5 Machine Operator.

(b) This grievance is in regards to the rescheduling of Mr. Groettum to a Basic Work Week other than his permanent basic work week which he received by seniority bid. He was rescheduled the week of 6-18-66 through 6-

24-66 as follows: Works Saturday and Sunday with Monday and Friday off.

(c) Mr. Groettum requests that his basic work week received by seniority bid not be rescheduled except by mutual consent between himself and management. Acting as Mr. Groettum's employee representative, Local 125, UFPC wishes to make the union's position clear: no rescheduling shall be done except by mutual content because any such rescheduling will not follow the full intent of public law 89-301 granting postal clerks a permanent Basic Work Week. Any rescheduling of clerks without their consent destroys the concept of permanency. From the union's point of view it appears that management is rescheduling clerks to avoid payment of overtime. Rescheduling of Mr. Groettum's basic work week causes considerable hardship on Mr. Groettum and his family as family plans have to be altered.

(d) This grievance has been discussed with Mr. Groettum's immediate supervisor and other ranking supervision in the Minneapolis Post Office without gaining a favorable decision in behalf of the grievant.

(e) William J. Cahow, President of Local 125, UFPC or his designated representative (exclusive bargaining agent in the Minneapolis Post Office) (for all clerks) will act as employee representative. Further, the United Federation of Postal Clerks will act as employee representative at all levels necessary to process this grievance.

Sincerely yours,

WILLIAM J. CAHOW,
President.

P. S. All correspondence and action on this grievance shall be directed to the President of Local 125, UFPC. Further, I have read the foregoing and agree with its contents.

S/ DOUGLAS E. GROETTUM.

Minneapolis Post Office

June 21, 1966

Mr. Walter J. Hogan
Postmaster
Minneapolis Post Office
Minneapolis, Minnesota 55401

Dear Mr. Hogan:

I am submitting a grievance and President William J. Cahow or someone appointed by him will represent me. My grievance is in regards to being rescheduled to a basic work week other than the one I received after bidding procedures in my division.

Further, the United Federation of Postal Clerks, AFL-CIO will act in my behalf on action taken at all levels necessary for processing this grievance.

Yours truly,

DOUGLAS E. GROETTUM
City Division Clerk
PFS-5 Machine Operator

DEFENDANT'S EXHIBIT NO. 2.

Affidavit of Richard J. Murphy.

[N. B. Attachments 1-7 to this affidavit are not reproduced here. They consist of letters to different employee organization heads. The contents are the same and are identical with Plaintiffs' Exhibit I. Attachment 8 is not reproduced. It is identical with Plaintiffs' Exhibit F.]

UNITED STATES DISTRICT COURT,
District of Columbia.

UNITED FEDERATION OF POSTAL CLERKS, AFL-CIO and DOUGLAS E. GROETTUM, v. LAWRENCE F. O'BRIEN, Postmaster General.	Civil Action. No. 575-67.

City of Washington, District of Columbia. } ss.

Affidavit.

Richard J. Murphy, first being duly sworn deposes and says:

1. That he is the Assistant Postmaster General, Bureau of Personnel, Post Office Department;

2. That in his capacity as such Assistant Postmaster General, he represents and acts for the Postmaster General in negotiations with employee organizations conducted pursuant to Executive Order 10988;

3. That during the course of negotiations which resulted in the current National Agreement signed August 31, 1966, a question arose whether the Postmaster General had the legal authority to establish temporary basic work weeks and to temporarily detail thereto, without their consent, employees assigned to permanent basic work weeks;

4. That he caused a request for a legal opinion concerning this matter to be made to the Office of the General Counsel, Post Office Department;

5. That the Office of the General Counsel expressed the opinion the Postmaster General had authority to take such

action provided the temporary basic work weeks were established prior to the beginning of the administrative work week which begins at 12:01 Saturday morning and ends at Midnight the following Friday night;

6. That the negotiators for the employee organizations were notified that the Postmaster General possessed such authority;

7. That the employee organizations wished to negotiate an agreement whereby the Postmaster General would not exercise such authority;

8. That after fully considering the matter, he (Mr. Murphy) was unwilling to so agree;

9. That this was one of the matters over which an impasse was reached;

10. That pursuant to the agreed upon procedure to resolve impasses, the matter was referred to the Postmaster General for resolution;

11. That he personally discussed this matter with the Postmaster General;

12. That before the Postmaster General made his decision he was made aware of the opinion of the Office of the General Counsel;

13. That thereafter the Postmaster General made the policy determination pursuant to which employees could be temporarily detailed to temporary basic work weeks without their consent provided they were established and the employees were notified of the temporary detail not later than the end of their tours of duty on Wednesday;

14. That the Postmaster General communicated his policy decision to each of the seven organizations having exclusive recognition at the national level by letters to them dated August 5, 1966, attachments 1 through 7.

15. That such policy decision was announced in the Postal Bulletin dated September 22, 1966, attachment 8;

16. That such decision as set forth in the letters dated August 5, 1966, and in the Postal Bulletin dated September 22, 1966, is still the Department's policy.

Further affiant sayeth not.

/s/ RICHARD J. MURPHY,
RICHARD J. MURPHY,
Assistant Postmaster General,
Bureau of Personnel.

Subscribed and sworn to before me this 7th day of July, 1967.

(Signature Illegible.)

My commission expires April 14, 1971.

Notary Public.

JUDGMENT.

(Filed Jan. 29, 1968.)

This cause having come before the Court on defendant's motion for summary judgment and to dismiss, and on plaintiff's cross-motion for summary judgment; upon consideration of the argument of counsel, the record, and the memoranda of the parties; and the Court being fully advised in the premises,

It is by the Court this 29th day of January, 1968, Ordered, Adjudged and Decreed:

1. That defendant Postmaster General's motion for summary judgment as to Douglas E. Groettum, the individual plaintiff herein, be, and hereby is, granted;

2. That defendant Postmaster General's motion to dismiss as to plaintiff United Federation of Postal Clerks,

AFL-CIO, for lack of standing be, and hereby is, granted; and

3. That plaintiff's cross-motion for summary judgment be, and hereby is, denied, and this action is dismissed.

JOHN J. SIRICA,
United States District Judge.

Certificate of Service.

I Hereby Certify that service of the foregoing proposed Judgment has been made upon plaintiffs by mailing a copy thereof to their attorneys, Herbert S. Thatcher, Esquire, and Donald M. Murtha, Esquire, 1009 Tower Building, Washington, D. C. 20005, on this 18th day of January, 1968.

/s/ GIL ZIMMERMAN,
Assistant United States Attorney.

NOTICE OF APPEAL.

Notice is hereby given that Plaintiffs hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the judgment entered in this action on

Dated this 21st day of February, 1968.

/s/ DONALD M. MURTHA,
HERBERT S. THATCHER,
DONALD M. MURTHA,
1009 Tower Building,
Washington, D. C. 20005,
Attorneys for Plaintiffs.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

UNITED FEDERATION OF POSTAL CLERKS, AFL-CIO, et al., Appellants, vs. LAWRENCE F. O'BRIEN, Postmaster General of the United States, Appellee.	Case No. 21685.

STIPULATION OF CONTENTS OF JOINT APPENDIX

Appellants and Appellee stipulate the following contents of the Joint Appendix:

District Court Docket Entries—Civil Action 575-67.

Complaint:

Answer:

Defendant's Motion for Summary Judgment (in part), and to Dismiss (in part).

Plaintiff's Cross-Motion for Summary Judgment.

Plaintiff's Exhibits:

A. Excerpts from Agreement between United States Post Office Department and United Federation of Postal Clerks AFL-CIO, September 24, 1966-October 31, 1967: Cover, Article III, 1, 2, 3; Article IV, A. 1, 2, 3; Article XV, A. 1, 2; F; Article XXII, A, B, C, D, E.

B. Excerpts from Agreement between United States Post Office Department and United Federation of Postal Clerks AFL-CIO, July 1, 1964-October 31, 1965: Article XV A.

C. Agreement dated January 21, 1966 as to the Application of Seniority on a one-time basis

for the implementation of Public Law 89-301. Section 3571 (d).

D. Excerpts from Agreement as to Seniority and Bidding Procedures, Postal Bulletin No. 20520, March 5, 1966: page 1 and page 2 down to "Carrier Craft" in the second column.

E. Excerpts from Postal Bulletin No. 20501, November 4, 1965: the top half of page one through the "Special Note"; IV A, B, 1, 2, 3, a, b; paragraph on page 7 beginning, 6. **General Instructions**, a, b, to the end of IV on page 8; V. A. 1, 2; VII A, 1, 2, 3, 4, 6, 7; VIII.

F. Excerpts from Postal Bulletin No. 20553, September 22, 1966, page 10, paragraph entitled **Work Schedules—Changes.**

G. Excerpts from Postal Bulletin 19, Minneapolis, Minnesota, No. 55401, May 19, 1966, page 2, the paragraph entitled BASIC WORKWEEK.

H. Decision of Board of Appeals and Review—Douglas E. Groettum, December 21, 1966—Defendant's Exhibit No. 1 includes an identical copy of Exhibit H.

I. Letter of Postmaster General to E. C. Hallbeck, August 5, 1966.

J. Affidavit of Douglas E. Groettum.

K. Affidavit of E. C. Hallbeck.

M. Excerpts from Department of Labor Bulletin No. 1480: Cover page, p. iii, pp. 1-6.

N. Excerpts from Department of Labor Bulletin No. 1251: Cover page, pp. 7, 8 and p. 21, beginning with "Daily and Weekly Overtime", and continuing on pp. 22 and 23, except for the last para. p. 23.

O. Excerpts from Hearings before Senate Post Office and Civil Service Committee: Cover page,

p. 1, p. 39, p. 42 beginning with the first para., p. 44, p. 45, p. 46, p. 47, p. 48 first three lines, p. 50 last ten lines, p. 51 first thirteen lines, p. 55 last eleven lines, p. 57, p. 58 all except last eleven lines, p. 225 beginning with the words "I would like to include at this point * * *" and continuing to the end, pp. 228-229 segment labeled "Automobiles", pp. 230-231 segment labeled "Petroleum", pp. 232-233 data relative to Colgate Palmolive Company and data relative to Monsanto Chemical Co.

R. Excerpts from Senate Committee Report Calendar No. 896, pp. 1, 5, 6 first sixteen lines, pp. 19-22 to end of Section 3573.

Defendant's Exhibits:

No. 1 Groettum file from Post Office records

No. 2 Affidavit of Assistant Postmaster General Richard J. Murphy

Judgment

Notice of Appeal

This Stipulation.

Dated Mar. 15, 1968.

HERBERT S. THATCHER,
DONALD M. MURTHA,
1009 Tower Building,
Washington, D. C. 20005,
Attorneys for Appellant,

FRANK Q. NEBEKER,
Chief, Appeals Section United States Attorneys Office, Washington, D. C.

BRIEF OF APPELLANTS.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 21,685.

UNITED FEDERATION OF POSTAL CLERKS, AFL-CIO,
and
DOUGLAS E. GROETTUM,
Appellants,

vs.

LAWRENCE F. O'BRIEN, Postmaster General
of the United States,
Appellee.

Appeal from a Judgment of the United States District Court for the District of Columbia.

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 8 1968

Nathan J. Paulson
CLERK

HERBERT S. THATCHER,
DONALD M. MURTHA,
1009 Tower Building,
Washington, D. C. 20005,
Counsel for Appellants.

St. Louis Law Printing Co., Inc., 411-15 N. Eighth St., 63101. CEntral 1-4477.

STATEMENT OF QUESTIONS PRESENTED.

1. Whether the Federal Employees Salary Act of 1965, Pub. L. 89-301, 39 U. S. C., Sections 3571 and 3573, as amended, requires the Postmaster General to make overtime payments for days worked in excess of a basic workweek which he has established pursuant to such Act, without formally establishing a new basic workweek, or whether the Act permits the Postmaster to make temporary ad hoc changes in the basic workweek under which hours worked in excess of a previously established basic workweek are compensated by compensatory time off rather than by the payment of overtime, although the Act itself expressly abolished the previous practice of granting compensatory time off for excess hours worked and expressly required the payment of overtime.

2. Whether a labor organization in the field of government employment having exclusive recognition on a national basis under Executive Order 10988, having a collective agreement with the Post Office Department, and having a duty to "act for" the employees it represents, has standing to bring suit for declaratory judgment and injunctive relief to protect rights of individual employees under the above Act and under the collective agreement where the national labor policy permits such suits by labor organizations in the field of private employment.

TABLE OF CONTENTS.

Table of Cases.

Statutes and Executive Orders.

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IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 21,685.

UNITED FEDERATION OF POSTAL CLERKS, AFL-CIO,
and
DOUGLAS E. GROETTUM,
Appellants,

vs.

LAWRENCE F. O'BRIEN, Postmaster General
of the United States,
Appellee.

Appeal from a Judgment of the United States District Court for the District of Columbia.

BRIEF OF APPELLANTS.

JURISDICTIONAL STATEMENT.

This is a suit for declaratory judgment and injunction brought below under 28 U. S. C., Sections 2201 and 2202. This appeal is brought under 28 U. S. C., Sec. 1291, from the order of the District Court (1) granting appellee's motion for summary judgment as to appellant, Douglas E. Groettum; (2) granting the Postmaster General's Motion to Dismiss as to the appellant, United Federation of Postal Clerks, AFL-CIO; and (3) denying appellants' cross-motion for summary judgment.

STATEMENT OF CASE.

Appellants, United Federation of Postal Clerks, AFL-CIO (Federation), and Douglas E. Groettum, brought an action in the District Court of the District of Columbia, seeking a declaratory judgment and appropriate equitable relief against the appellee, Lawrence F. O'Brien, Postmaster General of the United States, in respect to the application of Section 5 (a) and (b) of the Federal Employees Salary Act of 1965, Pub. L. 89-301, 39 U. S. C. 3571 and 3573, as amended, which Act, it is alleged, is being violated by the appellee (J. A. 3). Appellee, the defendant below, filed an answer admitting the substance of appellant's complaint, although denying violation of the Act (J. A. 14), followed by a motion for summary judgment (J. A. 19). Appellants responded with a cross-motion for summary judgment (J. A. 22).

The District Court (Judge Sirica) granted the appellee's motion for summary judgment as to appellant Groettum, dismissed the cross-motion for summary judgment by appellants, and dismissed the complaint as to appellant Federation on the ground it had no standing to sue (J. A. 135). This is an appeal from such determination.

Appellant, United Federation of Postal Clerks, AFL-CIO, is a national labor organization which, as the exclusive national representative under Executive Order 10988 (5 U. S. C. A., § 7301, pp. 300-304), represents some 309,000 clerical employees employed by the Postal Service. It is a party to a collective agreement with the Post Office Department under which it is recognized and functions as the exclusive representative of such employees and under which it is required to process all grievances filed by clerical employees through the various steps of the grievance procedures set forth in the contract when-

ever so requested by an individual grievant. Under E. O. 10988 and the collective agreement, it is the further duty of the Federation to protect and advance the wages, hours, and working conditions of all clerical employees employed by the Post Office Department and to enforce the provisions of the agreement.

Sections 3571 and 3573 of Title 39, U. S. C., as amended, require the Postmaster General to establish regular eight hour work day schedules of five days within an established seven day workweek for his employees and to pay time and one-half for hours worked in the two "off" days to annual rate regular employees.

Appellant Groettum is a senior annual rate regular Clerk PFS-5 employed in the Minneapolis Post Office. Following the passage of the 1965 Federal Employees Salary Act, and as required by that Act, the Minneapolis Postmaster assigned Groettum a basic workweek of Monday through Friday (J. A. 10). The established "service week" in the Department begins 12:01 on Saturday and ends at 12:00 P. M. the next Friday. Groettum's assigned "off" days were Saturday and Sunday, the first two days of the "service" week. In assigning this basic workweek, the Postmaster followed the procedures set forth in the collective agreement between the Post Office Department and the Federation as well as its own postal bulletin dated March 4, 1966, in which the Federation had concurred. These procedures involve the right of an employee to bid for a certain workweek with preference to be given according to his seniority (J. A. 42, 46, 47, and Pls'. Ex. G, J. A. 57).

Groettum continued to work such basic workweek of Monday through Friday when on Thursday, June 16, 1966, he was told by the Postmaster to work the following Saturday and Sunday, June 18 and 19, because clerks regularly scheduled for those days would be absent due

to scheduled vacations and personal emergencies. Thus Groettum worked the seven consecutive days of June 13-19. Groettum was instructed not to work on Monday, June 20, and Friday, June 24, which was part of his regular basic workweek for the next week. He was told, however, that he would not receive any overtime for his Saturday-Sunday work, but, instead, would receive compensatory time off for Monday, June 20, and Friday, June 24, on which days he did not work. The next week, starting June 25, Groettum, without further instruction, resumed his basic workweek, and thereafter continued on his original basic Monday through Friday workweek (J. A. 114-132, and J. A. 62-64).

When his claim for overtime for the Saturday and Sunday work which he had performed on June 18 and 19 was denied, Groettum filed a grievance under the National Agreement grievance procedure and sought and received the assistance of the Federation in processing the grievance (J. A. 131, 132). With that assistance the grievance was processed through the various grievance levels to and through the final level, namely, the Board of Appeals and Review. That Board, on December 1, 1966, denied his appeal and held that the Post Office Department had properly applied the new Pay Act in refusing to pay him overtime but instead granting him compensatory time off the next week (J. A. 114).

Because of the existence of many cases throughout the Department similar to Groettum's (J. A. 64-66) which the Federation was processing through the grievance procedures and because it was and is the fixed position of the Department that it had a right under the law to act as it did in respect to Groettum's claim for overtime compensation and in similar cases (J. A. 64-66), and because it was its function and duty to act for clerical employees having such complaints, appellant Federation,

together with appellant Groettum, commenced this action for declaratory judgment and for appropriate injunctive relief against the Postmaster General.[1]

STATUTES INVOLVED.

Section 5 (a) and (b), Public Law 89-301, 89th Congress, H. R. 10281, approved October 29, 1965, codified as 39 U. S. C. 3571 and 3573, set forth in full in Appendix A.

STATEMENT OF POINTS.

1. Congress, by enacting Pub. L. 89-301 (39 U. S. C. 3573, 3575) intended to abolish compensatory time off in lieu of overtime for postal clerks in grades G. S. 10 and below.

2. Congress, by enacting Pub. L. 89-301, intended:

(a) to require the establishment of a fixed basic workweek which is not subject to "temporary" change;

(b) in 39 U. S. C. 3573, to abolish compensatory time off in lieu of overtime and to require payment of overtime to regularly scheduled annual rate employees who work on "off days" for the reason that "off days" are in "excess of the regular work schedule".

---

[1] While the case originally was brought as a class action, the class action aspects of the case were dismissed by agreement of the parties and the case was heard and decided with the Federation and Groettum the only parties to the action; the existence of numerous claims similar to those of Groettum's was used only as a basis for injunctive relief and the standing of the Federation to bring suit. In oral argument before the district court, counsel for appellee stated: "Plaintiffs have stated in their memorandum that they believe the rule of law which evolves out of Mr. Groettum's individual case would be binding or would be followed by the Postmaster General. We said the same thing in our memorandum" (Page 3, Transcript of proceedings November 16, 1967).

3. The provisions of Pub. L. 89-301 (39 U. S. C. 3573) require the defendant to pay overtime to the plaintiff Groettum for working on two "off days".

4. An employee organization which is party to a collective bargaining agreement with an agency of the United States pursuant to Executive Order 10988 and which agreement provides grievance machinery is a proper party with standing to sue in District Court on behalf of an individual employee whom it represents, where the litigation involves the exact grievance in which the organization represented the employee before the agency and where the adverse agency action is being contested on behalf of the employee and where such grievance involves breach of the collective agreement between the organization and the agency, and, in any event, has right to sue on behalf of its members when there is at issue the interpretation of a statute of the United States which affects generally the hours, schedules, workweeks and overtime payment pertaining to the employees it represents.

SUMMARY OF ARGUMENT.

I.

A. **This suit involves the question of the interpretation and application of the Federal Employees Salary Act, hereinafter called the "1965 Act", particularly sections codified as 39 U. S. C., 3571 and 3573, as amended.**

Congress in the 1965 Act established a basic workweek for postal employees and required overtime rates for work in excess of the basic workweek. It deliberately eliminated compensatory time off and instead provided premium pay at time and one half for "off days" for postal employees. The Postmaster General, beginning in June 1966, aban-

doned any pretense of complying with the 1965 Act. Instead he has issued instructions that basic workweeks could be "temporarily" changed and employees could be "temporarily" assigned to work on "off" days without premium compensation. In doing so the appellee is and has been in continuous violation of the 1965 Act in that he has acted outside of his authority in failing to adhere to established basic workweek assignments and to pay overtime for work in excess of the basic workweek. In effect he has ignored the law and returned to the old practice of compensatory time off on an hour for hour basis in lieu of overtime—the very practice which Congress sought to correct by the 1965 amendments. That he is in violation of the 1965 Act is clearly apparent from a consideration of the legislative history reflecting the purpose of the 1965 Act, including the historical background of premium pay practices whether established by statute or collective bargaining in private industry; the language of the statute; and the rules of statutory construction.

B. Historically the postal employees have always (until the 1965 Act) been excluded from generally existing practices providing regularly scheduled workweeks of five eight-hour days enforced by premium pay sanctions for work assigned on the two off days of the workweek. In enacting the 1965 Act Congress carefully considered the pertinent data reflected in the overtime requirements for both private and federal government employment together with what it termed the archaic practices of the Post Office Department. Congress considered the testimony of the then Postmaster General Gronouski, who stressed the necessity for abolishing the old requirement of granting compensatory time off and the necessity for establishing a basic workweek with time worked "outside" of that basic workweek to be paid for at an overtime rate. Congress reviewed the formulae disclosed through studies of private employment contracts whereby for many years

overtime was paid for hours over forty in addition to "off days", as such, or for work on the 6th and 7th days or for working six or seven consecutive days and the practices in the Federal Government of paying employees overtime for working in excess of forty hours.

C. To eliminate the evils and inequities as reflected in the legislative history, including the historical data and considering the 24-hour seven day operations of the Post Office Department, Congress etched out a statutory formula that took care of the needs of the Department and at the same time protected the employees' enjoyment of regular working hours weekly work schedules by requiring the establishment of regular basic workday and "off" day schedules (basic work weeks) and by providing overtime payments when work was assigned in excess of the regular schedule. The directive of the statute was clear and the appellee in consultation and agreement with appellant Federation proceeded to establish regular scheduled workweeks and to make assignments accordingly.

About eight months after the passage of the 1965 Act the Postmaster suddenly abandoned any intention of adhering to the basic scheduled workweeks as established under the new law and commenced assigning employees to work on "off" days without payment of overtime. This was true in appellant Groettum's case whose basic workweek was "temporarily" changed so that for one week in June 1966 he was required to work on seven consecutive days including his two "off" days without premium pay, to stay away on two of his regular work days and who the week following continued on his regular pattern. This practice has since been widespread and is a fixed announced practice of the appellee, i. e. overtime need not be paid for "temporary" changes in the schedule.

D. The rationale of the Department is not clear but it is certain that it has, in effect, returned to the old practice

of compensatory time in lieu of overtime and that nowhere in the statute is there contained any exemption or proviso permitting "temporary" changes in established basic workweek schedules nor any overriding permission to ignore the statute on the basis of "emergencies," "needs of the service," or "the practicalities," or otherwise as contended by appellee in the court below.

E. The interpretation sought by appellees is in direct conflict with the rules of statutory construction which require a liberal construction of overtime statutes. *United States v. Silk*, 300 U. S. 704, 712, 91 L. ed. 1757, 1767. To adopt the construction now contended for by the Postmaster in Groettum's case and others would defeat the basic purpose of the new law and would make the vast changes wrought, as between the old law and the new, completely meaningless. For, by the simple device of a "temporary" change in the basic workweek, the old practice of granting compensatory time off could be and was in fact restored. *Walling v. Helmerich & Payne, Inc.*, 323 U. S. 37. To permit the Postmaster to interpret the statute by making "temporary" changes in a basic workweek on the grounds of "emergency" or "needs of the service" or "practicalities"—words not contained in the Act—would permit him to rewrite the law. This neither he nor the courts may do. *U. S. v. Gates*, 184 U. S. 134.

In the light of language of the Statute, based on the long history of neglect of Postal employees as to the ordinary humanitarian principles which apply to most all other employees in and out of the government, the attempt to freeze the Postal Clerks in the outmoded and outlawed strictures of ad hoc "week to week" changes in assignments without the payment of overtime for "off days" constitutes a violation of the statute which must be corrected.

II.

The Federation is the exclusive representative of all postal clerks employed by the Post Office Department and is a party to a collective agreement with that Department. As such exclusive representative it has a duty to protect the rights of employees under that agreement and under the law, here the 1965 Pay Act. That Act, since its enactment, must be regarded as an integral part of the agreement as if expressly incorporated therein. *Wood v. Lovett*, 313 U. S. 362; *Farmers & M. Bank v. Federal Reserve Bank*, 262 U. S. 649. In addition, it is the Federation's duty to process grievances under the agreement and it has processed not only Groettum's grievance but numerous grievances of other clerical employees similarly situated. Accordingly it has standing to bring suit for declaratory judgment and injunctive relief as co-plaintiff with Groettum to determine whether the Department has violated the law or the agreement by making temporary changes in the basic workweek and refusing to pay Groettum and others overtime for days worked in excess of the established basic workweek.

Since the decision of the United States Supreme Court in *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448, there has existed a national labor policy drawn from federal statutes and court decisions in the labor-management field. That national labor policy, applicable at least to employees in private industry, accords unions a right to bring suit in courts to protect the individual rights of the employees it represents in such matters as overtime, holiday pay and the like—issues which affect individuals rather than the union as an entity. The Supreme Court specifically so determined in *Smith v. Evening News Assn.*, 371 U. S. 195. See also *U. A. W. v. Hoosier Cardinal Corp.*, 383 U. S. 696. In so holding the Court reversed prior common law precedent (see *Westinghouse Employ-*

ees v. Westinghouse Corp., 348 U. S. 437 holding that unions had no standing to bring such suits and had standing only to bring an action in cases affecting the union as an entity). While *Smith* and following cases were decided under Sec. 301 of the Labor Management Relations Act which applies only to private industry and not government employment, the rationale and the reasoning of the Court in reversing the common law rule is applicable here. It was stated in *Smith* that:

> The rights of individual employees concerning rates of pay and conditions of employment are a major focus of the negotiation and administration of collective bargaining contracts. Individual claims lie at the heart of the grievance and arbitration machinery, are to a large degree inevitably intertwined with union interests and many times precipitate grave questions concerning the interpretation and enforceability of the collective bargaining contract on which they are based.

These remarks apply equally to collective bargaining and the administration of collective bargaining agreements by unions in the field of federal employment. *Westinghouse* was reversed not because the language of Sec. 301 gave unions a standing to sue but because the realities of modern union-management relationships and the functions of unions vis-a-vis the employees they represent required it, and the same considerations which justified the holding in *Smith* justify a similar holding here. Under Executive Order 10988 the President has accorded federal employees the same right to join and bargain through unions that the Labor Management Relations Act gave employees in private industry; both under that Act and under the Executive Order unions are required to represent and act for employees faithfully and to administer the collective agreement for them.

Section 301 did not specifically grant unions standing to sue to protect individual rights and similarly the Executive Order contains no reference to the subject. However, the national labor policy granting unions in private industry standing to sue in cases such as the present was in full effect when EO 10988 was promulgated. Absent express language in the Executive Order, it cannot be assumed that the President intended to ignore this policy or to decree that it be given no effect in the field of federal employment. It would have been inconsistent and discriminatory for him to have disallowed unions of government employees the same standing in courts to protect the rights of their members that unions in private industry possess, particularly when the reasons for instituting the policy in the private field are entirely applicable in the federal field. Further, it is important to note that under the very Pay Act now under consideration, Congress indicated a strong desire to equate conditions in government employment with conditions in private industry.

The cases cited by the appellee to contravene standing were all decided prior to *Smith*. In other cases, such as *Fishgold v. Sullivan Drydock*, 328 U. S. 275 and *NAACP v. Alabama*, 357 U. S. 449, the Supreme Court has permitted unions and similar associations the right to sue to assert rights affecting individual members as distinguished from the union as an entity.

ARGUMENT.

I.

THE POSTMASTER GENERAL ACTED OUTSIDE OF HIS STATUTORY AUTHORITY IN FAILING TO ADHERE TO PREVIOUSLY ESTABLISHED BASIC WORKWEEK ASSIGNMENTS AND TO PAY OVERTIME FOR WORK IN EXCESS OF THE BASIC WORKWEEK.

A. INTRODUCTION.

Congress, taking into consideration the special work patterns required to move the mail, and taking into consideration the need to equalize the working conditions of postal employees with other civil servants, and with private industry, etched out a particular formula to fill the needs of the Department and at the same time provide the employees with two days of rest each week. In doing so it considered the common formula found in statutes and in labor union contracts all of which is reflected in the legislative history. The formula established by Congress for Post Office employees is not complicated. It required the Postmaster to fix workweeks of five specified days in a fixed seven day span. It then required overtime to be paid at one and one half if an employee worked on his day of rest. It is as simple as that. Congress established a clear and effective method to fit the unorthodox work flow needs of this government industry which, unlike many industries and government departments, could not shut down on Saturday and Sunday. Knowing that a variety of working days and workweeks other than Monday through Friday would necessarily be scheduled to meet the needs of the Department Congress found a practical solution to fit the needs of any workweek pattern no matter how er-

ratic. This formula, applied only to regular clerks, required overtime pay for hours in excess of that schedule. Consequently, it did not matter that the Department might schedule the first two days of the week (as in Groettum's case) as regular days off because the statute, by requiring overtime for days in excess of schedule, discouraged assignment of work on such days by requiring payment of a premium rate for these days as such.

Faced with the statutory challenge of being forced to "establish" "regular", "fixed" "basic" workweeks of five days and to pay overtime for work on the two off days of the workweek, whether they occurred at the beginning, in the middle or the end of the workweek, the Department after wrestling with the problem for eight months finally obtained an opinion from its General Counsel to the effect that a way around the statute was possible. The rationale of the counsel was to keep changing "days off" to "workdays" whenever it suited the wishes of the Department. Thus, an employee, he said, could be told one minute before midnight on Friday, when the new week began, that instead of being off on Saturday and Sunday these days would be called work days and that his regular workdays of Monday through Friday would be changed so that e. g., Monday and Tuesday would be days off. In thus temporarily changing the basic workweek, overtime could be avoided no matter what regular schedule had been established.

A variety of changing positions have been advanced by appellee in the lower court to justify the emasculation of the statute. However, an exact and consistent rationalization of the Department has never been made clear. In effect the appellee has merely reiterated, without substantiation, other than "needs of the service", or "emergencies", or "practicabilities", his right to make "temporary" changes in "basic workweek schedules". Consequently plaintiffs have undertaken in their

brief to provide the Court with an understanding of the historical background which brought about the legislation, an examination of the legislative history which reveals the purpose Congress sought to achieve, an examination of the language of the statute, the interpretation required by the language of the statute under the rules of statutory construction, and a documentation of the violation of the statute by appellee.

B. THE LEGISLATIVE HISTORY SUPPORTS APPELLANTS' POSITION.

Before considering the language and the legislative history of the 1965 Act we believe it will be helpful to outline the historical background of the pay practices in the Post Office. These practices were entirely different from those in private industry and indeed in other government employment. As we will see, Congress in the 1965 Act attempted to equalize practices within the Government and to conform them as much as possible to those in private industry. Because the traditional concepts of the Department were so completely unique prior to the 1965 Act and so foreign to those generally found in public and private employer-employee relationships relative to work weeks, overtime, and compensatory time, it is necessary to outline the historical background in order to understand exactly what Congress was seeking to accomplish.

1. Historical Background Leading to Statutory Reform.

(a) *Post office practice prior to the 1965 Act.*

Prior to the time of the 1965 Act it was the statutorily approved practice of the Department to work employees on Saturdays and Sundays at will, subject only to the granting of compensatory time off within the next five work days. Historically, the Post Office Department had

never designated any fixed seven day period as a workweek. Annual rate regular employees, in order to earn their annual salaries, were required to work 2080 hours in a year, in whatever order, to earn their salaries. By giving a compensatory day off in the next five working days, that is from Monday through Friday, for each Saturday or Sunday worked, this mathematical objective was achieved. 39 U. S. C. 3573 (a) (A).

The only restriction on the Department was the collective agreement which in recent years required the Department to work out assignments with the employees' representative (J. A. 35). In essence then, by statute and contract, although Saturday and Sunday were recognized ideally as days off, there were no sanctions to require its realization, that is, there was no penalty for working employees on Saturday or Sunday (even though the employee had already worked the preceding five consecutive days of Monday through Friday) because such work was paid for by granting equivalent time off on an hour for hour basis during the next five days. This was called "compensatory time off".

(b) *Post office practices compared to other government agencies and private industry.*

Under the practices described in part (a), supra, postal employees prior to 1965 had been excluded for twenty years from the overtime statutes applicable to most government employees which recognized the 40-hour week with premium pay for extra hours. 5 U. S. C. 5541 (2) (vi). Most government agencies do not present unique workweek problems. Employees generally work Monday through Friday in a fixed workweek of seven days with Saturday falling at the end of the period. Thus Saturday always falls in the overtime period. Sunday is almost never worked. Consequently, the premium pay practice provided by Congress for most of the employees in the

Executive agencies follows the formula of requiring time and one-half for "work in excess of 40 hours." 5 U. S. C. 5542 (originally codified 5 U. S. C. 911).

The rationale for the exclusion of field service postal employees had never been clear, so that Postmaster Gronouski was lead to say in his testimony before Congress relative to the consideration of the Federal Pay Act of 1965, that he learned to his "amazement" (J. A. 88) that the overtime practices of the Department were antiquated and out of line with other government employees and employees in private industry (J. A. 90). He stated that only compensatory time off was being granted in lieu of premium pay for overtime.

For many years employees in private industry have enjoyed the benefits of the Walsh-Healy Act (1936) and the Fair Labor Standards Act (1938) which generally provide, within a fixed seven day period, a 40-hour week with time and a half for overtime (41 U. S. C. 35 and 29 U. S. C. 201).

Private industry, through a variety of contract provisions, has limited hours and required premium pay in order to insure the realization of a five day workweek with two days of rest. Contract provisions to achieve this goal include premium pay of at least time and one-half for hours over 40, for the sixth and seventh day in a workweek, the sixth and seventh days consecutively worked, and for working on scheduled "off days". Secretary of Labor Wirtz provided the Senate Committee with statistical data reflecting these facts, and it is incorporated in the Senate Hearings out of which came the Federal Pay Act of 1965 (J. A. 84, at 102, 103—see attachment of J. A. 103). The general purpose of premium pay is to serve as an incentive to discourage consecutive days of work exceeding five, for working employees on Saturday and/or Sunday, and on other days outside of

regularly scheduled hours as well as for work over forty hours. The objective is to provide regular days of rest to the employees. These practices are also reflected in the United States Department of Labor Bulletins No. 1251 (J. A. 77-83), to which reference was made in the Senate Hearings and U. S. Labor Department Bulletin No. 1480, a study requested by the Post Office Department (J. A. 66). All of these data reflect the use of premium pay as a "design to discourage the scheduling of work on expected days of rest and recreation and to compensate workers for the inconvenience of working on these days" (J. A. 67). In private industry contractual provisions providing premium pay for "off days" was a common practice (J. A. 102 and 103—see last column in the tabulations, see J. A. 80, 82 and 83). Also frequently found were provisions for premium pay for the sixth or seventh days of the week as such and for sixth and seventh days worked consecutively without regard to the workweek (J. A. 77, 80, 82, 83). Thus the practice, found in many industries, is to pay premium rates for all work outside of regularly scheduled hours, regardless of the number of hours previously worked.

2. The Legislative Intent as Shown by Congressional Hearings and Reports.

Before considering the language of the new Act and comparing it with that of the old it would be helpful to quote from the testimony of the Postmaster General and from the House and Senate Post Office Committee Reports to see precisely what Congress and the Department had in mind when it made the sweeping changes from the old law to the new.

The problem before Congress and the one which it intended to solve by Public Law 89-301 is no better expressed than in the testimony of the Honorable John A. Gronouski, Jr., Postmaster General, and his assistant, Richard J.

Murphy.[2] The Postmaster General described the outmoded practices regarding overtime in the Postal service and what was needed to modernize the overtime practices in these words:

> "The matter I wish to spend most of my time on—and the one of extreme importance to the Post Office Department—is the whole question of premium pay and compensatory time for overtime work in the postal service.
>
> Early in my tenure as Postmaster General I learned to my amazement that—
>
> 1. We were regularly working large numbers of employees for excessively long periods of time over the commonly accepted 40-hour week.
>
> 2. Our substitute employees received straight time rates regardless of the number of hours worked.
>
> 3. Our regulars, ostensibly assigned Monday through Friday schedules, were getting only compensatory time for working many Saturdays and Sundays.
>
> "These antiquated, unsatisfactory practices basically stemmed from an over-increasing workload, accompanied by only a token increase in manpower. Since the law requires a compensatory day off for regulars within 5 days after working a Saturday or Sunday, substitutes became the workhorses of the Department, working many hours of overtime at straight pay. Correction of this inequity has become the No. 1 goal of major postal unions, as well as of the Department.

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[2] Pages 42-48, Appellants' Exhibit O, Federal Pay Legislation. Hearings Before the Committee on Post Office and Civil Service. United States Senate, Eighty-Ninth Congress, First Session, August 16, 23, 26, 27, 30, October 5, 6, and 8, 1965 (J. A. 84-102).

The first front of our attack on this problem was to reduce the weekly work hours per employee by obtaining authority to hire more people. As this committee knows, our request for additional manpower was partially granted by the Congress—8,896 people instead of 15,000 requested. Also, Congress passed Public Law 89-114, exempting the Post Office Department from the legislative ceiling. As a consequence of these authorities from Congress, I have directed that no employee shall work more than 56 hours a week and that about 20,000 temporary jobs be changed to career ones.

The second front of our attack centers on the question of premium pay. We started with some elementary premises:

1. Postal operations are continuous: As part of the communications network of the country, like newspapers, radio, and telegraph, we must operate 24 hours a day, 7 days a week. It is as important to move the mail on Saturday as on Monday, even though the volume is down somewhat. As an illustration, I have prepared this chart.

(The chart referred to followed.)

2. Cash for overtime instead of compensatory time is by far the prevalent practice for rank-and-file employees in industry.

(The chart referred to followed. (JA 90))

3. The 40-hour workweek and pay at the rate of time and a half for over 40 are basic elements of the all-embracing Fair Labor Standards Act.

4. Personnel above the rank-and-file level should receive the same overtime pay or compensatory treatment as other Federal employees on the same level.

> 5. Premium pay for substitutes, since they are really a kind of auxiliary 'on call' work force, should be measured not in terms of a daily factor but for the total hours worked in any week.

Mr. Chairman, S. 2085 proposes legislation which encompasses the above premises. Specifically, S. 2085 provides:[3]

> 1. Regular employees should have a work schedule of 40 hours a week, consisting of five 8-hour days. For work in excess of that schedule—more than 8 hours in 1 day, or duty on a sixth or seventh day—premium pay will be required for all employees in salary levels PFS-7 or below. There would be no compensatory time. While Saturday and Sunday are not identified for special treatment, we have no intention of expanding weekend duty for employees. In fact, we will continue our present policy of limiting weekend duty as much as possible.

The 5-day workweek within a 7-day period would make no basic change in the hours and days actually worked by regulars, but they would derive additional benefits. *Any work on a scheduled off day would be paid at the rate of time and a half in cash rather than in compensatory time off*. Also, a regular assigned to work on a weekend would be eligible for annual leave or sick leave for that day. (Emphasis supplied.)

Furthermore, by eliminating the compensatory system for rank-and-file personnel, we would eliminate much dissension during the Christmas period over the question of how regulars are to be compensated for work performed on weekends in December."

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[3] S-2085 and H. R. 10281 were the predecessor bills culminating in the Pay Act of 1965.

Assistant Postmaster General Murphy precisely stated the objectives to be achieved through conforming the postal overtime laws with the Fair Labor Standards Act:

> "Overtime premium pay typically has two purposes.
>
> 1. To encourage the employer to hire additional workers rather than pay a premium. The assumption here is that *the work is regular and recurring,* and this susceptible to be assigned to regular employees. [sic]
>
> 2. To pay a differential to scheduled employees for inconveniencing them for working beyond their schedule. These purposes clearly do not apply to substitutes. *Our constant objective is to regularize work* whenever it is possible, leaving the unplanned, intermittent work for substitutes. (Emphasis supplied.)
>
> * * * . . . we strongly advocate the need to conform to the requirements of the Fair Labor Standards Act relative to payment at time and one-half for work in excess of 40 hours in 1 week; so our objection then is to payment for time and one-half over 8 hours a day."

In addition to the testimony of the Department officials, representatives of the Federation, President E. C. Hallbeck and Patrick J. Nilan, Legislative Director, strongly urged upon the Committee the amendment of the workweek end overtime laws so as to permit the clerks to enjoy the same privileges and benefits as employees in private industry, as well as others in the employ of the United States. (Pages 109-127, Hearings on Post Office and Civil Service, United States Senate, 89th Congress, 1st Sess., August 16, 23, 26, 27, 30, October 5, 6, and 8, 1965 (Plaintiffs' Ex. O, J. A. 84).)

Representatives of the Post Office Department and the Federation gave similar testimony before the Committee

on Post Office and Civil Service in the House between June 1 and June 29, 1965.

On the basis of the testimony before it and the long existing knowledge on the part of the Committee of the workings of the Postal Department, the Committee stated the objectives to be achieved by the proposed legislation. The House Committee on Post Office and Civil Service Report No. 792, 89th Congress, 1st Session, on pages 3, 4, 7 and 8, shows exactly what it had in mind:

Overtime Pay.

"This legislation also achieves a major breakthrough in the improvement of Federal employees' overtime and holiday pay provisions in order to bring them closer to provisions of the kind widely accepted in modern, progressive private enterprise.

The postal field service, in particular, has labored under an archaic and inequitable set of strictures in the field of overtime work and overtime pay. Although a great deal of postal work is performed by substitute employees, the substitutes received only straight hourly rate pay irrespective of the length or the irregularity of their daily and weekly duty assignments. Nor is any consideration whatever given to following the common practice of private industry of paying premium rates for work done on a Saturday or a Sunday. Similar weaknesses exist in the statutes and regulations governing holiday work and pay.

This unjust situation is corrected, and the overtime and holiday work program of the postal service is brought up to date, by provisions in the bill which establish fair, moderate, and workable premium pay requirements for overtime and holiday work. These provisions, consistent with enlightened practices in private enterprise, are also in complete harmony with

the comparability principle of Public Law 97-793 and, indeed, are necessary to round out the congressional policy adopted in that act [pp. 3, 4].

Postal Service Overtime and Holiday Pay.

Section 107 completely revamps and modernizes the antiquated overtime and holiday pay provisions which are applicable to postal field service employees. * * *

A basic, or standard 5-day, Monday-through-Friday workweek is established for all postal field service employees, with authority in the Postmaster General to establish a basic workweek including Saturday where necessary to provide service. Senior annual rate regular employees will have priority of preference for the Monday-through-Friday workweek, but may select some other basic established workweek if they desire.

The amendment made by subsection (b) spells out and defines what work will constitute overtime work in three general employee categories—annual rate regular employees, hourly rate regular employees, and substitute employees. In brief, overtime work for an annual rate regular employee is any work performed in excess of his basic workweek schedule or on a Sunday. Overtime for an hourly rate regular employee will be work performed in excess of 8 hours a day or 40 hours a week or on a Sunday. Overtime work for a substitute employee will be work performed in excess of 8 hours a day or 40 hours a week."

The Senate Committee on Post Office and Civil Service, in Report No. 910, 89th Congress, 1st Session, at pages 5 and 6 (See J. A. 104) states its views succinctly, as follows (J. A. 105):

"*Postal overtime and holiday pay.* The bill revises and progressively modernizes the present law on over-

time and holiday pay for postal employees. Unlike many other agencies of the Government, the postal service is a 7-day, 24-hour operation. The present volume of mail is above 72 billion pieces annually. It will continue to rise.

Overtime work is simply mandatory under present conditions. The limitation upon funds available for additional career manpower requires the use of temporary substitutes. Until now, no substitute employee has been paid overtime compensation in any case, and no regular employee has been paid for working a sixth or seventh day in the workweek. The Post Office Department has recognized this inequity. The Fair Labor-Standards Act of 1938 established a basic overtime program applicable to private enterprise, and the Government is long overdue in fulfilling the requirements which Federal law requires of private industry. Appendix B explains the changes to be brought about by the enactment of H. R. 10281.

Basically, regular employees in salary levels PFS-7 and below *will be paid for any overtime work* (*regular employees have an advance-scheduled basic workweek of five 8-hour days*). Regular employees in PFS-8 and above will either be paid for overtime work or given compensatory time off equal to the number of overtime hours worked. Substitute employees, whose workweek depends on the workload, will be paid for all time in excess of 40 hours a week. Holiday pay, now within the discretion of the Postmaster General and inapplicable to employees in salary level PFS-8 and above, will be paid in all cases to those in PFS-7 and below, and will either be paid or compensatory time off will be given to those in PFS-8 and above. A special premium pay of 25 percent of the hourly rate will be paid to regular employees whose 5-day work schedule includes an 8-

hour shift any part of which occurs on Sunday. For that full 8-hour shift, alone, the employee will receive the extra compensation. (Emphasis supplied.)

The committee has given careful consideration to the problem of scheduling employees for work in the postal field service. As referred, H. R. 10281 gave substantial preference to annual rate regular employees by establishing a basic workweek exclusive of Saturday and Sunday. The committee amendment has modified this in view of its belief that one of the most important factors to be considered is the Post Office Department's obligation to deliver the mail.

Restrictions upon management, in a public service which must utilize its best and most experienced personnel for maximum efficiency and service, will result in poor service to the American public and a poor image for the postal service and all of its employees. Nonetheless, the committee recognizes and strongly supports the rights of employees and the policy established by Executive Order 10988. Therefore, although the Postmaster General shall have no statutory restriction upon scheduling employees to any 5-day workweek the committee has encouraged the Department to give preference, to the maximum extent practicable, to senior regular employees for a basic workweek of Monday through Friday.

Thus, the purpose of the amendments (39 U. S. C. 3571, 3573) was to attempt to bring assignment and overtime practices of the Post Office Department in line with the modern practices enjoyed by employees in most industries and in all other fields of government employment.[4] These practices have been established for others through law or collective bargaining agreements.

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[4] See Labor Department Release on overtime No. 1480. Survey of Department of Labor (Plaintiffs' Ex. M, J. A. 66).

C. THE LANGUAGE OF THE STATUTE ACCOMPLISHES THE OBJECTIVES SOUGHT BY CONGRESS AND ITS PROPONENTS AND GIVES CLEAR DIRECTION FOR ITS IMPLEMENTATION WHICH THE APPELLEE ORIGINALLY FOLLOWED AND THEN ABANDONED.

1. The Statutory Language.

The history of the legislation as briefed above shows the facts and circumstance which existed when Congress was contemplating an adjustment of the laws governing hours of work, work schedules and overtime for the Post Office employees in 1965. There were several bills before Congress (S. 2085 and the initial draft of H. R. 10281), specifically naming Saturday and Sunday as off days to be paid at premium rates. It was pointed out to Congress that the Post Office Department was a seven day operation requiring employees to be regularly scheduled to work on Saturday and Sunday. Consequently, having before it all the facts relevant to private and public employment and in order to provide regular schedules and regular days off, whether Saturday and Sunday or some other two days, Congress drafted a comprehensive interrelated statutory formula to accomplish the objective. The formula was simple: (1) the Postmaster would establish a seven day period within which basic schedules of five 8-hour days would be established (J. A. 110, see last sentence). (2) the basic scheduled workweek to be established could be any combination of five days of 8-hours each, subject to the limitations that as many Monday through Friday assignments were to be made available to the senior employees showing a preference and if not Monday through Friday, then any other preferred combination. (3) Once the basic schedule workweeks were determined the employees were to be paid time and one half for working outside the schedule. (This formula applies specifically

only to annual rate employees whereas substitutes and hourly rate employees were to be paid overtime only when they worked "in excess of forty hours.")

The statute couched in ordinary language reflects the Congressional purpose and in pertinent part follows, together with the old language set in brackets and the new in italics for the convenience of the Court in understanding the sweeping changes that were made.[5] As seen below, the whole of former Section 3571 is stricken, and new language substituted and former Section 3573 is very substantially modified.

[§ 3571. Maximum hours of work.

[Except as otherwise provided in this title, employees may not be required to work more than eight hours a day. The work schedule of employees shall be regulated so that the eight hours of service does not extend over a longer period than ten consecutive hours.]

§ 3571. Maximum hours of work.

(a) A basic workweek is established for all postal field service employees consisting of five eight-hour days. The work schedule of employees shall be regulated so that the eight hours of service does not extend over a longer period than ten consecutive hours.

(b) The Postmaster General shall establish work schedules in advance for annual rate regular employees consisting of five eight-hour days in each week.

(c) Except for emergencies as determined by the Postmaster General, the hours of service of any employee shall not extend over a longer period than twelve consecutive hours, and no employee may be required to work more than twelve hours in one day.

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[5] The full text of the old and new statutes are set forth in the Joint Appendix, pp. 107-113.

(d) To the maximum extent practicable, senior regular employees shall be assigned to a basic workweek Monday through Friday, inclusive, except for those who express a preference for another basic workweek. (Emphasis supplied.)

[§ 3573. Compensatory time, overtime, and holidays.

[In emergencies or if the needs of the service require, the Postmaster General may require employees to work more than eight hours in one day, or on Saturdays, Sundays, or holidays. For that service he shall grant employees in the "PFS" Schedule compensatory time or pay them overtime compensation under the following rules:

[(1) Each employee in or below salary level PFS-7 shall be paid for all work in excess of eight hours in one day at the rate of 150 per centum of his hourly basic compensation.

[(2) (A) Each employee in or below salary level PFS-7 who performs work on Saturdays or Sundays shall, under regulations prescribed by the Postmaster General, be granted compensatory time in an amount equal to the excess time worked within five working days, except that, in lieu of such compensatory time, the Postmaster General may, if the exigencies of the service require, authorize him to be paid, for work performed on Saturdays and Sundays during the month of December, at the rate of 150 per centum of his hourly basic compensation.]

§ 3573. Compensatory time, overtime, and holidays.

(a) In emergencies or if the needs of the service require, the Postmaster General may require employees to perform overtime work or to work on holidays. Overtime work is any work officially ordered or approved which is performed by—

(1) an annual rate regular employee in excess of his regular work schedule.

(2) an hourly rate regular employee in excess of eight hours in a day of forty hours in a week, and

(3) a substitute employee in excess of forty hours in a week.

The Postmaster General shall determine the day and week used in computing overtime work.

(b) For each hour of overtime work the Postmaster General shall compensate an employee in the "PFS" Schedule as follows:

(1) He shall pay each employee in or below salary level PFS-7 compensation at the rate of 150 per centum of the hourly rate of basic compensation for his level and step computed by dividing the scheduled annual rate of basic compensation by two thousand and eighty.

(2) He shall grant each employee in or above salary level PFS-8 compensatory time equal to the overtime worked, or in his discretion in lieu thereof pay such employee compensation at the rate of 150 per centum of the hourly rate of basic compensation of the employee or of the hourly rate of the basic compensation for the highest step of salary level PFS-7, whichever is the lesser.

(h) For the purposes of this section and section 3571 of this title—

(1) "Annual rate regular employee" means an employee for whom the Postmaster General has established a regular work schedule consisting of five eight-hour days in accordance with section 3571 of this title.

(2) "Hourly rate regular employee" means an employee for whom the Postmaster General has established a regular work schedule consisting of not more than forty hours a week.

(3) "Substitute employee" means an employee for whom the Postmaster General has not established a regular work schedule.

* * * * * * *

It is to be noted first that former Section 3571 is stricken in its entirety and, instead, an entire new Section 3571 was enacted. Under new Section 3571 a basic five day eight-hour workweek "is established" for all postal field employees. Next, the Postmaster General is required to establish a regular work schedule in advance to be composed of five 8-hour days in each week. Finally, two types of basic workweeks are established, namely (a) Monday through Friday, and (b) combinations of other days, with the Monday through Friday workweek to be established "to the maximum extent practicable" and assignment of these workweeks are to be determined by the employee's preference. (Work schedules as distinguished from a workweek means the specific days to be worked and the specific time of day on which the employee's tour is to begin and end. See collective agreement Article XV A (1) and (2) (J. A. 27-28)[6] and House and Senate Report, supra. Thus for the first time postal employees would enjoy fixed specific work schedules of hours and days on which they could regularly rely.

Former Section 3573 is rewritten in its entirety. Under old section 3573 there was no provision for overtime but there was provision for compensatory time off. Under new 3573 this is repealed and instead the Postmaster is permitted to work employees overtime "in emergencies or if the needs of the service require." When an employee has worked overtime the Postmaster is required to pay him premium compensation at the rate of time and a half.

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[6] "d. Work Schedule. A regularly scheduled tour of specific hours for each scheduled service day within an established basic work week" (J. A. 28).

The whole thrust then of the new Pay Act was, first, to establish a basic workweek and, second, to abolish the practice of granting compensatory time off for any overtime work and instead, to require payment of premium pay for overtime.

2. The Appellee Initially Proceeded to Conform With the Act.

The Postmaster General initially proceeded to conform with the Act. The first step, of course, was to abolish compensatory time off as directed by statute, 39 U. S. C. 3573. That this abolishment was necessary to the working of the new Congressional scheme is apparent. A basic workweek concept would have no meaning if the Department could call in an employee scheduled regularly to work Monday through Friday and direct him to work Saturday and simply say "take off next Wednesday." Consequently, by Postal Bulletin 20501, issued November 4, 1965, as soon as feasible after the enactment of the Act, October 29, 1965, the following provision was made:

> "2. Compensatory Time.
>
> a. *Compensatory time for work performed on Saturday and Sundays by all regular employees is abolished*" (J. A. 49).

Appellee then proceeded for the first time in Post Office history to comply with Section 3573 (a), and to establish a fixed seven day workweek:

> "1. Service Week.
>
> a. A service week of Saturday through Friday is established effective November 6, 1965. The service week will begin at 12:01 a. m. on Saturday and end at 12 Midnight on Friday" (J. A. 51).

In keeping with the announcements in Postal Bulletin of November 4, 1965, the Federation on behalf of the Clerks

met with representatives of the appellee for the purpose of implementing the provisions of Section 3571 and 3573, as amended (J. A. 48, 55, 56). As a result of these meetings beginning early in 1966 (J. A. 37) a detailed and agreed upon program was formulated and announced March 4, 1966 as Postal Bulletin 20520 and established, as its title indicated, "Seniority and Bidding Procedures" (J. A. 42-47). The ground rules for this, as detailed in Postal Bulletin 20520 provided for the following steps in determining basic workweek assignments:

1. A determination of "the fluctuation of volumes of work between the several days of the week in each unit" was to be "taken fully into account" (J. A. 44).

2. Consultation with employee organization who had recognition (J. A. 45).

3. Determination of the number of "regular assignments" needed in a seven day period.

4. Breaking the regular assignments into (a) "Maximum number of basic M-F assignments, (b) Those beginning on Saturday with Sunday and Monday off, and (c) The number beginning on Saturday or Sunday with 2 fixed days off (J. A. 46).

5. Posting of regular job assignments available (J. A. 47).

6. Setting up machinery for bidding on a seniority basis (J. A. 46, 47).

7. Assignment of the successful bidder to the "basic workweek" assignment (J. A. 47).

For most of the Postal service, including Minneapolis where appellant Groettum was employed, the above steps were carried out within the 90 days following the March 4, 1966 Bulletin-Agreement (J. A. 42). Typical of the culmination of these processes is the announcement by the Minneapolis Post Office on May 21, 1966:

"**Basic Workweek.**

Effective Saturday, May 21, 1966, all employees are assigned to the basic workweek as determined and bid under the supplementation of Section 3571 (d) Pub. Law. 89-301 and outlined in Postal Bulletin 20520, Washington, D. C., March 4, 1966" [J. A. 57].

This meant that the Postmaster had determined and posted the number and level of clerk jobs necessary for a basic M-F workweek, the number required for a Saturday, with Sunday and Monday off, workweek, and whatever other combinations were necessary and permissible under Bulletins 20501 and 20520 (J. A. 48, 42). The Postmaster at Minneapolis then gave as many as practicable of the M-F assignments to the senior regular employees including Groettum. The same procedures, as applied in Minneapolis, were duplicated throughout the country.

All the foregoing demonstrates that the basic workweek was to have permanency and regularity and not be subject to "temporary" change. If not, why did the Department go through these elaborate procedures in establishing the basic workweek?

3. The Appellee's Departure From Compliance.

Not long after having formally established these basic workweeks and making assignments, postmasters around the country began changing the basic workweek on a so-called "temporary basis". This was done in Groettum's case on June 16, 1966 (Thursday) when the Minneapolis Postmaster told him to work June 18 and 19 (his usual "off days") because some of the clerks regularly scheduled for Saturday and Sunday would be absent due to "scheduled vacations and personal emergencies". At the same time Groettum was instructed not to work on Monday, June 20, and Friday, June 24 as compensatory time off. No overtime compensation was paid for the

Saturday and Sunday work. *The next week, beginning June 25, Groettum, without further instructions and during the weeks which followed, worked his original basic Monday through Friday basic work week* (J. A. 62).

This led to the filing of a grievance in Groettum's case (J. A. 113, 132). Other similar grievances were filed in other post offices at that time and later when a similar practice was followed (J. A. 64). In addition, an exchange of letters and meetings between the National Federation and the Postmaster General took place in which the problem was discussed (J. A. 57). Finally, on September 22, 1966, the Postmaster General promulgated Postal Bulletin No. 20553 (J. A. 56) in which he confirmed the policy of permitting so-called "temporary changes in basic work-week schedules," and the practice has been followed since.

At the present time, then, the Postmaster General claims the right to institute these temporary changes in the basic work weeks as long as they are done in advance of the service week. The appellee had directed that advance notice of such changes be given by Wednesday midnight preceding the new week. However, no posting or bidding procedures are followed and there is no attempt to consult with the union representative on any such change.

D. THERE DOES NOT EXIST ANY SUPPORT IN THE LANGUAGE OF THE STATUTE OR IN THE RULES OF STATUTORY INTERPRETATION TO SUPPORT THE APPELLEE'S ACTIONS IN MAKING "TEMPORARY" CHANGES.

There is simply no statutory support for the position of the Department that it can make "temporary" changes in a basic work week at will; the 1965 Act contains no provision warranting such changes.

Pointing up the problem is Appellee's Bulletin of September 22, 1966 (J. A. 56), which reflected earlier instruc-

tions which had resulted in denying overtime to plaintiff Groettum and other clerks throughout the field service. This Bulletin is still in effect so the question is by what lawful authority can the appellee make "temporary" changes where the statute is not only silent as to such authority but where the words of the statute, standing alone, or in the light of the statutory purpose rule out the concept of "temporary". It is, of course, conceded that the appellee may make changes if they are to create basic regular schedules and if established procedures are followed. Thus if after experience, it appears that a previously established basic workweek does not meet the needs of the service the Postmaster would be at liberty to correct that condition but he can do so only by going through the bidding and posting procedures and effecting a change which from then on would be permanent and regular.

The appellee has not advanced a clear or consistent rationale for an interpretation of the Act that would permit "temporary" changes. However, if we consider some of appellee's suggested arguments justifying his actions, there can be found no justification in law in his support.

1. The Statute Does Not Permit Temporary Changes in a Basic Workweek Based on "Emergencies" or "Needs of the Service".

At times appellee has urged that Section 3571 must be construed as though it contained a proviso permitting non-compliance "in emergencies or if the needs of the service required." An examination of the four subsections of Section 3571 gives no clue to such an interpretation. On the contrary the only reference to such language appears in section (c) which permits work over twelve hours only "for emergencies as determined by the Postmaster General". The use of the "emergency" language by Con-

gress in one section and not in others reveals the legislative intention to exclude it where it does not appear. In this connection appellee also has pointed to the "emergency" language in Section 3573 (a). Again, the appellee is blind to the effect of the change between the old law and the new. In the past, former Section 3573 permitted compensatory time off "in emergencies or if the needs of the service require" whereas now under these circumstances the appellee may "require" employees to work overtime but only if he pays overtime for such hours. Thus, the reference in present Section 3573 (a) operates only to permit the Postmaster to require overtime work where emergencies or needs of the service so dictate; it in no respect authorizes a temporary change in the previously established basic workweek or work schedule. This interpretation sought by the appellee asks the Court to read into the statute words which are not there. This the Court is not at liberty to do. *United States v. Frank Gates*, 148 U. S. 134.

2. **The Statute Does Not Permit Temporary Changes in Basic Workweeks Merely Because Made "in Advance".**

At other times the appellee suggests that there are no conditions necessary and that he can change schedules at any time prior to midnight on Friday as long as it is done in advance. This apparently was the advice given to appellee by his counsel (J. A. 60). If this interpretation is based on use of the phrase "in advance" in Section 3571 (b) (which states that work schedules shall be established "in advance"), he obviously is in error. The amendments must be considered as a whole and the concept of establishing a regular basic workweek schedule necessarily includes the requirement it be made beforehand, which is all that the phrase "in advance" means in this context and in this statute. The phrase "in advance" cannot be taken out of context. All the words of this amendment

must be taken into account where not to do so would completely frustrate the plainly disclosed legislative intent. *McDonald v. Thompson*, 305 U. S. 263 at 266.

The Department's interpretation flies in the face of the language and the purposes sought to be achieved by Congress. If changes can be made at will, then there is no difference between the treatment accorded employees prior to the amendment and now. Changes in the language of an amendatory statute, the Supreme Court has held, are persuasive that a change in sense was intended. *Creek County v. Seber*, 318 U. S. 705, 717, 87 L. ed. 1094, 1102; *Spring City Foundry v. Commission*, 292 U. S. 122, 187, 78 L. ed. 1200, 1205.[7]

3. In Assigning Basic Workweeks the Phrase "To the Maximum Extent Practicable" in Section 3571 (d) Does Not Permit Temporary Changes in the Basic Workweek Once It Has Been Established.

The Postmaster further relies on the language of Subsection (d) of Section 3571 of the new law which states that "to the maximum extent practicable" senior regular employees shall be assigned to basic workweek, Monday through Friday exclusively. This, he says, affords statutory leeway to make temporary changes in the basic workweek. However, the language of subsection (d) must be read as an integral part of all four subsections of Section 3571 and clearly applies only to what a basic workweek shall be and what shall guide the Postmaster in establishing this basic workweek. It does not authorize the Postmaster to make temporary changes in a basic workweek once that basic workweek has been established. Specifically,

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[7] The general rule is that a change in phraseology indicates persuasively, and raises a presumption, that a departure from the old law was intended, and amendments are accordingly generally construed to effect a change, particularly where the wording of the statute is radically different, 50 Am. Jur., Sec. 275, and cases cited.

the language was designed to avoid requiring the Postmaster to establish a single basic workweek of Monday through Friday for all postal employees and to permit the Postmaster, where the practicalities make it necessary to do so, to establish some other basic workweek, such as Saturday through Wednesday, or Sunday through Thursday, although he is enjoined to establish a Monday through Friday workweek to the maximum extent practicable. This is clear from the language of Senate Report, pages 5 and 6, in the original House Bill, H. R. 10281, 89th Cong., 1st Sess., which made it almost mandatory to establish a basic workweek of Monday through Friday for all annual rated regular employees. When it was pointed out that this restriction was too rigid, the final Act was changed to the present language. The Committee states as follows in respect to this change:

> "The committee has given careful consideration to the problem of scheduling employees for work in the postal field service. As referred, H. R. 10281 gave substantial preference to annual rate regular employees by establishing a basic workweek exclusive of Saturday and Sunday. The committee amendent [sic] has modified this in view of its belief that one of the most important factors to be considered is the Post Office Department's obligation to deliver the mail.
>
> Restrictions upon management, in a public service which must utilize its best and most experienced personnel for maximum efficiency and service, will result in poor service to the American public and a poor image for the postal service and all of its employees. Nonetheless, the committee recognizes and strongly supports the rights of employees and the policy established by Executive Order 10988. Therefore, although the Postmaster General shall have no statutory restriction upon scheduling employees to any

> 5-day workweek the committee has encouraged the Department to give preference, to the maximum extent practicable, to senior regular employees for a basic workweek of Monday through Friday" (J. A. 107).

Nothing could be more clear than that Congress was concerned in 3571 with establishing regular tours of duty for employees generally and certainly not with encouraging week to week changes in assignments for individual employees.

4. The Statute Does Not Permit Temporary Changes in the Basic Workweek Based on "Practicalities" or "Common Sense" or "Hardship."

To deny the Postmaster the right to make temporary changes in a basic workweek in emergency situations creates no hardship in the service and does not leave the Post Office unable to operate as appellee suggests. If an emergency arises or if the needs of service temporarily so require, the Postmaster may simply require the employees to work beyond their established workweek and pay them overtime. Indeed, as seen by the testimony of the Postmaster General in support of the Act, it was one of his objectives to use the mandatory overtime provisions as a reason for increasing the number of regular employees who would be hired so as to avoid the payment of overtime by scheduling varying basic workweeks.

If a larger number of regular annual rate employees were hired, basic workweeks could then be established so as to permit a sufficient number of annual regular employees to be placed on a basic workweek other than Monday through Friday so that they would be available for Saturday or Sunday work to meet the needs of the service, as determined by past experience, without paying overtime. If other unforeseen circumstances did arise, then all

that need be done would be to work a regular clerk overtime or call in a substitute. Thus, both the language of the Act and its legislative history make it completely clear that any emergency or need of service situation was to be dealt with by the use of regulars or substitutes and the payment of overtime where required (J. A. 95).

Finally, as we have seen, if, after establishing a basic workweek, experience thereafter indicates that the postmaster has scheduled too many Monday-Friday workweeks to meet the needs of the service, then the Postmaster General is free to establish a new basic workweek, but this must be done through the system of posting and bidding which are set forth in the Postal Regulations and in the collective agreement between the parties, not on a unilateral ad hoc basis. That is why those regulations and provisions have been written. Only in this way or through the payment of overtime or the use of substitutes can the postal employees be assured the regularity of employment which it was the entire purpose of the 1965 Act to establish.

Prior to the passage of the Act, postal employees, unlike those in private industry or even in other branches of the Federal Government, had no established weekends or days off which they could plan to spend with their families or for their private affairs; they were subject to the beck and call of the postmaster and were compensated only by a day off sometime in the future. In the light of the clear language of the Act and its legislative history, it is difficult to follow the postmaster's plea for a "common sense application of the law". He points to no hardship to the postal service which would follow if appellants' contentions are sound. On the contrary, his application of the law would create hardship for the postal employees. Further, the Postmaster's version of the law is contrary to practice in private industry with which the sponsors of the

law hoped to achieve parity (J. A. 106). One can imagine the consequences if private employers in automobile, steel, or any of the other organized industries would assert the right to make temporary changes in basic workweeks to avoid paying overtime. In short, the Postmaster's common sense application would bring about the identical situation which prompted the law's enactment. There is simply no way to distinguish what was done in the Groettem case from what had been the practice before the new law became effective. If the law is indeed to have any "common sense application" in accordance with the terms and legislative history and if the postmaster is not to be permitted at will to frustrate its announced objectives, he cannot be permitted to claim temporary discretion to ignore the law, nor can he ask the court to rewrite the law for him. *United States v. Frank Gates*, 148 U. S. 134 at 136.

E. THE ENTIRE SCHEME OF THE ACT IS TO REQUIRE ESTABLISHMENT OF A BASIC WORKWEEK WHICH IS PERMANENT AND REGULAR, AND NOT SUBJECT TO TEMPORARY CHANGE.

The very idea of the "basic" workweek and the very objectives which Congress sought to accomplish was to give to postal employees for the first time in their history just that—a *basic* workweek, something which was permanent and not subject to weekly change. Thus, Congress in subsection 3571 (a) states that *"a basic workweek is established."* In (b) "The Postmaster General shall *establish work schedules in advance.* In 3573(a)(1) we have the language "*regular* work schedule and, finally 3573(h)(1) "for the purpose of this section and 3571 of this title—

> "(1) 'Annual rate regular employee' means an employee for whom the Postmaster General has established a regular work schedule consisting of five eight-

hour days in accordance with section 3571 of this title."

The same meaning of permanency is applied in the definition of "basic workweek" in the collective bargaining agreement between the defendant and the Federation. In Article XV A 1, the parties use the words, "on a recurring basis", "regular cycle" and "regularly recurring basis", all carrying the connotation of permanency.

The words "establish", "regular", and "basic" and "recurring" are words of common meaning and are diametrically opposed to the meaning of "temporary" which the defendant would superimpose over the word "basic". It is nowhere suggested that in this legislation the words chosen by Congress are not to have their ordinary meaning. *Jones v. Liberty Glass Co.*, 332 U. S. 524, at 531 (1947); *Helvering v. Hammel*, 311 U. S. 504, at 511 (1941).

F. APPELLEE FAILS TO GIVE THE ACT THE BROAD CONSTRUCTION THE LAW REQUIRES, BUT RATHER ESTABLISHES A DEVICE TO AVOID COMPLIANCE.

1. Social Legislation Such as the Pay Act of 1965 Must Be Liberally Construed in Favor of Its Beneficiaries.

Broad resistance on the part of management to social legislation including the National Labor Relations Act, Fair Labor Standards Act, Social Security Act, and others long ago resulted in the establishment of a firm principle of law calculated to give judicial support to achieving the Congressional purposes. The rule thus established is that the words of the statutes where social legislation is concerned must be liberally construed to give maximum protection or benefit to those on whose behalf the legislation was enacted. This principle, well

stated in *United States v. Silk*, 300 U. S. 704, at 712, 91 L. ed. 1757, at 1767, is as follows:

> As the federal social security legislation is an attack on recognized evils in our national economy, a constricted interpretation of the phrases by the courts would not comport with its purpose. Such an interpretation would only make for a continuance, to a considerable degree, of the difficulties for which the remedy was devised and would invite adroit schemes by some employers and employees to avoid the immediate burdens at the expense of the benefits sought by the legislation.

A variety of schemes and devices were instituted by management in order to avoid the effects of the overtime provisions of the Fair Labor Standards Act. Applying the rules of liberal construction the courts have very carefully scrutinized and frequently set aside such plans whose existence frustrated the achievement of the Congressional intent. Thus, the employer in *Walling v. Helmerich and Payne, Inc.*, 323 U. S. 37, computed "regular" and "overtime" hourly rates so as to insure that the total wages for each tour would continue to be the same as under the original contracts, thereby avoiding the necessity of increasing wages or decreasing hours of work as the statutory maximum workweek of 40 hours became effective. The Supreme Court stated that:

> "Since the wages under the old system and the (respondent's) split day plan were identical, the original tour rates could be used as the simple method of computing wages for each pay period. The actual and regular workweek was accordingly shorn of all significance . . .
>
> Congressional purpose in enacting 7 (a) (of the Fair Labor Standards Act) was twofold: (1) to spread employment by placing financial pressure on the em-

> ployer through the overtime pay requirement and (2) to compensate employees for the burden of a workweek in excess of the hours fixed in the Act . . .
>
> (Respondent's) plan was so designed as to deprive the employees of their statutory right to receive for all hours worked in excess of the first regular 40 hours one and one-half times the actual regular rate."

Recognizing that parties would seek to circumvent the clear objective of the Act by relying on semantic legerdemain, the Supreme Court warned that: "*No plan so obviously inconsistent with the statutory purpose can lay a claim to legality.* . . . Even when wages exceed the minimum prescribed by Congress, the parties to the contract must respect the statutory policy of requiring the employer to pay one and one half times the regular hourly rate for all hours actually worked in excess of 40. Any other conclusion in this case would exalt ingenuity over reality and would open the door to insidious disregard of the rights protected by the Act." (Emphasis supplied.)

Efforts on the part of the employers to manipulate the beginning and ending times of workweeks to avoid paying overtime resulted in the issuance by the Secretary of Labor of the following interpretation reading in part:

> ". . . Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act." U. S. Department of Labor, Interpretative Bulletin Title 29, Part 778 of the Code of Federal Regulations, Sec. 778.105.

As a result of this under the Wage and Hour Law, employers, knowing Saturday work will be required, may no longer during the course of a week suddenly announce

that the workweek, instead of ending Saturday, will end on Friday so as to throw Saturday work into the new workweek and thus avoid payment of overtime for Saturday which would other wise be required. By the same token, appellee may not manipulate the established regular scheduled basic workweek for the purpose of turning a premium overtime day into one requiring only regular pay as was done in Groettum's case and as has been done and will be done as long as the "temporary" change directive is operative.

2. To Adopt Appellee's Interpretation Would Require the Court to Rewrite the Law in a Manner Which Would Frustrate the Law's Objectives.

The provisions of 39 U. S. C. 3571-3573 are no less important than the Fair Labor Standard Act, simply because they apply to employees of the Post Office and were enacted 30 years after other employees were already receiving such common benefits. The well tested rules of interpretation of overtime statutes have equal application here and constitute a bar to appellee's continuing evasions.

The approach of the Postmaster General in Groettum's and similar cases is not new. As long ago as 1893 we find the Supreme Court overruling his interpretation of an Act of Congress in order to avoid a clear directive to pay extra for hours over eight "in a day". In disagreeing with the Department which maintained that to comply with the "eight hour law" it could compile days on an average basis, giving a man an excess of hours one day and a deficit another, the Supreme Court in *United States v. Frank Gates*, 148 U. S. 134, used language which applies equally here, at p. 136.

> The carrier's eight hour law declares "that hereafter eight hours shall constitute a day's work" but

> it allows compensation to continue in the form of an annual salary, and requires no deduction to be made if the duties of the day do not extend through the prescribed time. It also declares that "if any letter carrier is employed a greater number of hours per day than eight he shall be paid extra for the same." *To sustain the interpretation given to the Act by the department, it will be necessary to read in it by construction the words "on an average"*, i. e. if any letter carrier is employed on an average a greater number of hours per day than eight, he shall be paid extra for the same. *This the court is not at liberty to do.* The carrier is entitled to eight hours' work and to his pay if work is not furnished to him. For any excess on any day he is entitled to extra pay. The only set-off that can be maintained is when he is absent from duty without leave. The department is at liberty to keep a carrier employed eight hours every day, but not to give him a deficit of work one day and an excess another: 37 L. ed. at 396 and 397 [Emphasis supplied].

Courts, as well as post office officials, are required to apply statutory provisions as they were written. Appellee is, in effect, asking the court to rewrite the law by inserting a provision authorizing temporary changes in a basic work week. He asks the Court to ignore the legislative history which shows the purpose to be to remove archaic concepts and to modernize the overtime practices. He also asks that the Court ignore the related language throughout the amendment which all points to the principle of a firm, regular, fixed basic workweek. The Department is again attempting to do the very thing it was enjoined from doing in *Gates*. It is submitted that that case is controlling here.

II.

THE FEDERATION HAS STANDING TO SUE ON BEHALF OF INDIVIDUAL POSTAL CLERKS IN ORDER TO SECURE RIGHTS GRANTED TO THEM UNDER THE LAW AND UNDER THE AGREEMENT BETWEEN THE FEDERATION AND THE POST OFFICE DEPARTMENT.

The Federation is the exclusive representative of all postal clerks employed by the Post Office Department (who now total some 309,000, 265,000 at the time the complaint herein was filed), and is a party to a collective agreement with the Department. As such representative it is its duty to represent such employees in the protection of their rights under the agreement and such rights as such employees may have under the law. The Federation asserts a standing to sue for declaratory judgment and injunction on behalf of individual clerks to protect these rights.

A. THE FEDERATION HAS STANDING BECAUSE APPELLEE HAS BREACHED ITS COLLECTIVE AGREEMENT WHICH INCORPORATES THE LAW AND BECAUSE OF THE FEDERATION'S PARTICIPATION IN THE GRIEVANCE OF GROETTUM AND OTHERS SIMILARLY SITUATED.

Under the Pay Act of 1965, the postal employees were accorded certain benefits, including overtime pay for hours worked in excess of the basic workweek. These benefits of the Pay Act are to be deemed a part of the collective agreement between the Federation and the Department as if they were expressly incorporated. *Wood v. Lovett*, 313 U. S. 362; *Farmers & M. Bank v. Federal Reserve Bank*, 262 U. S. 649. In addition, Sction 7 (1) of E. O. 10988 provides as follows in respect to any agreements entered

into between a labor organization and a governmental agency under that Order:

> (1) *In the administration of all matters covered by the agreement officials and employees are governed by the provisions of any existing or future laws* and regulations, including policies set forth in the Federal Personnel Manual and agency regulations, which may be applicable, *and the agreement shall at all times be applied subject to such laws, regulations and policies* [emphasis supplied].

The collective agreement between the Federation and the Department includes provisions providing for bidding procedures which would be applicable in establishing a basic workweek (See Article XV, J. A. 27 and Article XXII, J. A. 29), and also provisions dealing with overtime including a requirement that when any employee is requested to work overtime he shall be notified as long in advance as possible. See Article XV, Section F (J. A. 29). These provisions would be useless if the Department's position in this case is upheld.

In addition to the Federation's standing as a party to the collective agreement, the Federation has participated in a series of formulations and negotiations which were culminated in the filing and processing of plaintiff Groettum's grievance. The Federation concurred with the Post Office Department in the issuance of Postal Bulletin 20501, Nov. 4, 1965 (Ex. E),[8] was a party to the agreement which

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[8] VII. Employee-Management Relations

A. No changes shall be made as a result of these instructions without prior consultation at the local level with recognized employee organizations. See Article IV, Section D and Article VI, Section E of the National Agreement.

C. The Department and national exclusive employee organizations have agreed that because of the complex issues involved in complying with the Act's provision that to the maximum extent practicable, senior regular employees shall be assigned to a basic

defines "service week," "work schedules," and "basic workweek" (Ex. A, Art. XV), and, together with the Department, established seniority and bidding procedures (Exs. A, C, D, E). Further, the Postmaster in his letter to the president of the Federation (Pl. Ex. I) and his statement in Postal Bulletin 20553 (Pl. Ex. F) which is at the heart of this controversy, implicitly recognized the Federation's role in the interpretation and application of Pub. L. 89-301. Finally, pursuant to its agreement with the Post Office Department the Federation processed appellant Groettum's grievance through all steps of the grievance procedure culminating in the decision of the Board of Appeals, as well as numerous other grievances for other employees similarly situated.

The Federation is obligated to process grievances for its members. The fixed position of the appellee, however, makes processing grievances on the issue of overtime pay a futile gesture because those responsible for acting upon the grievances are required to apply the appellee's rules. Hence a judicial decision will not only clarify the contract language but will avoid a multiplicity of suits. The instruction in Postal Bulletin 20553 (Ex. F) has either, resulted in loss of overtime pay to all of the clerks, or each employee continuously is threatened with unlawful manip-

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workweek Monday through Friday, inclusive, except for those who express preference for another basic workweek, implementation will be delayed until bidding procedures and seniority are thoroughly discussed. However, in order to comply with those portions of the Act which require immediate implementation such as scheduling annual rate regular employees to basic workweeks of five 8-hour days and other requirements of the law, installation heads will have to make some changes in existing schedules. These changes must only be made after proper consultation and then only on a "detail" basis. *No changes will be considered permanent or binding, but will be subject to bidding procedures as determined at the national level.*

D. *Certain provisions of the National Agreement, Article XV, A-1, 2, 3, B; and Article XXII D(i)* are *in conflict with the Act* and these implementing procedures. *They are no longer effective as written* (Emphasis supplied).

ulation of his established regular workweek. To put a stop by court action to this widespread continuing violation, which is shown to exist in the affidavit of the Federation's President E. C. Hallbeck (Ex. K), is fully within the functions of the Federation whose agreement with the Department as to workweek assignments, overtime, seniority and bidding are not otherwise enforceable.

B. UNDER THE NATIONAL LABOR POLICY UNIONS HAVE A STANDING TO SUE TO PROTECT NOT ONLY THEIR RIGHTS AS AN ENTITY BUT THE INDIVIDUAL RIGHTS OF THE EMPLOYEES THEY REPRESENT.

Despite the Federation's total involvement in the controversy, the Department makes the assertion that the Federation has no standing to sue. In *Smith v. Evening News Ass'n.* (371 U. S. 195), respondent argued that an employee, who had been discriminated against because of his union affiliation, to collect wages in the form of damages, was not among those "suits for violation of contracts between an employer and a labor organization . . ." as provided in Sec. 301, Labor Management Relations Act. Respondent relied on prior cases (*Westinghouse Employees v. Westinghouse Corp.*, 348 U. S. 437) which held that Sec. 301 did not give the federal courts jurisdiction over a suit brought by a union to enforce employee rights which were variously characterized as peculiar to the individual benefit or which were, is their subject matter, uniquely personal, or arising from separate hiring contracts between the employer and the employee.

The Supreme Court in *Smith*, however, overruled those prior cases and concluded that (371 U. S. at 200):

> "The concept that all suits to vindicate individual employee rights arising from a collective bargaining contract should be excluded from the coverage of

Sec. 301 has thus not survived. The rights of individual employees concerning rates of pay and conditions of employment are a major focus of the negotiation and administration of collective bargaining contracts. Individual claims lie at the heart of the grievance and arbitration machinery, are to a large degree inevitably intertwined with union interests and many times precipitate grave questions concerning the interpretation and enforceability of the collective bargaining contract on which they are based. To exclude these claims from the ambit of Sec. 301 would stultify the congressional policy of having the administration of collective bargaining contracts accomplished under a uniform body of federal substantive law. This we are unwilling to do."

The Supreme Court reaffirmed its position in *U. A. W. v. Hoosier Cardinal Corp.*, 383 U. S. 696, wherein the petitioner union sought to recover wages and vacation pay for employees whom it represented and who were entitled to the pay pursuant to an agreement to which petitioner and respondent corporation were parties. The Court stated (383 U. S. at 699 and 701):

> We note at the outset that this action was properly brought by the union under Sec. 301. There is no merit to the contention that a union may not sue to recover wages or vacation pay claimed by its members pursuant to the terms of a collective bargaining contract. Such a suit is among those "suits for violation of contracts between an employer and a labor organization" that Sec. 301 was designed to permit.
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> * * * * * * *
>
> It is clearly a federal question, for in Sec. 301 suits the applicable law is "federal law, which the courts must fashion from the policy of our national labor laws." Textile Workers v. Lincoln Mills, 353 U. S. 448, 456, 1 L. ed. 2d 972, 980 S. Ct. 912.

The comments of Justice Douglas dissenting in *Westinghouse, supra,* are relevant now that that case has been reversed. He stated (348 U. S. at 465, 467):

> We make mountains out of molehills in not allowing the union to be the suing as well as the bargaining agency for its members as respects matters involving the construction and enforcement of the collective bargaining agreement. Individual contracts of employment result from each collective bargaining agreement. But those contracts are the resultant of the collective bargaining system, a system that continues to function and operate after the contracts are made. The concept of collective bargaining contained in the statute (29 U. S. C., Sec. 159 (a)), includes of course, the negotiation of the collective agreement and the settling of the terms of the individual contracts. But the collective bargaining relationship does not end there. To be sure the Taft-Hartley Act provides that there shall be no changes in the provisions of the agreement during its term, 29 U. S. C., Sec. 158 (d). But that does not mean that the collective bargaining agent drops out of the picture once the agreement is made. We know enough of trade-union practices to know that the advent of collective bargaining has produced a permanent, organized relationship between the union and the employer, involving a day-to-day administration of the collective agreement. The Act indeed extends the right of collective bargaining that far. For it specifically provides that . . . to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, *or any question arising thereunder* . . . 61 Stat. 142, 29 U. S. C., Sec. 158(d) (italics added).

The processing of grievances is recognized by the Act as a function which the labor organization performs or may perform. For 29 U. S. C., Sec. 152 (5) defines "labor organization" as an agency which deals with employers, inter alia, "concerning grievances." As the National Labor Relations Board stated in *Hughes Tool Co.*, 104 N.L.R.B. 318, 326, "The adjustment of grievances, viewed in the larger aspect, constitutes to a great degree, the actual administration of a collective bargaining contract."

The administration of the collective agreement is its life and meaning. The adjustment and settlement of grievances, the development of an administrative practice concerning the collective agreement give it force and authority.

* * * * * * *

It is plain, I think, that the grievance procedure is a part of the collective bargaining process. And a lawsuit is one of the ultimates of a grievance. A lawsuit, like negotiation or arbitration, resolves the dispute and settles it.

In short, the union represents the interests of the community of employees in the collective bargaining agreement. The wide range of its interests are envisaged by the Act, which gives the collective bargaining agency exclusive authority to bargain "in respect to rates of pay wages, hours of employment, or other conditions of employment." 29 U. S. C., Sec. 159 (a). The range of its authority is the range of its interests. What the union obtains in the collective agreement it should be entitled to enforce or defend in the forums which have been provided. When we disallow it that standing, we fail to keep the law abreast of the industrial developments of this age.

As long ago as 1922, the Supreme Court in *United Mineworkers v. Coronado Coal Co.*, 259 U. S. 344, recognized

the peculiar status of a labor organization as representative of its members it stated (at p. 387):

> "More than this, equitable procedure *adopting itself to modern needs* has grown to recognize *the need of representation by one person of many* too numerous to sue or be sued . . . so that out of the very necessities of existing conditions and the utter *impossibility of doing justice otherwise,* the suable character of such an organization as this has come to be recognized in some jurisdictions, and many suits for and against labor unions are reported in which no question has been raised as to the right to treat them in their closely united action and functions as artificial persons capable of suing and being sued." (Emphasis supplied.)

See also *Fishgold v. Sullivan Drydock and Repair Corp.*, 328 U. S. 275, 281, 90 L. Ed. 1230, 1238; *National Association for the Advancement of Colored People v. Alabama, etc.*, 357 U. S. 449; *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123.

C. THE RATIONALE OF THE NATIONAL LABOR POLICY GIVING STANDING TO SUE IS APPLICABLE TO UNIONS IN THE PUBLIC FIELD.

It is true that the *Smith* and *Hoosier Cardinal* cases were decided under the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C., Sec. 185, from which the federal government is excluded as an employer, so that the Act applies only to suits between employers and employees in private industry. It is submitted, however, that the same rationale and reasoning which impelled the Supreme Court in *Smith* to grant unions in private industry standing to sue to protect the individual rights of employees which they represent and which caused that Court to reverse prior common law doctrine not permitting such

suits (see *Westinghouse, supra*) is applicable to unions in the government field. Just as Congress in the LMRA established the principle of exclusive recognition and collective bargaining as a matter of federal law applicable to employees in private industry affecting commerce, so has the President, in E. O. 10988 established a similar body of law applicable to employees in the federal government. See *Amell v. United States,* 384 U. S. 158, 16 L. Ed. 2d 445.

Thus, the "Whereas" clauses of E. O. 10988 states as follows:

> Whereas participation of employees in the formulation and implementation of personnel policies affecting them contributes to effective conduct of public business; and
>
> Whereas the efficient administration of the Government and the well-being of employees require that orderly and constructive relationships be maintained between employee organizations and management officials; and
>
> Whereas subject to law and the paramount requirements of the public service, employee-management relations within the Federal service should be improved by providing employees an opportunity for greater participation in the formulation and implementation of policies and procedures affecting the conditions of their employment;

More specifically, Section 6 (b) of that Order provides that:

> Section 6. (b) When an employee organization has been recognized as the exclusive representative of employees of an appropriate unit *it shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees* with-

> out discrimination and without regard to employee organization membership. [Emphasis supplied.]

If labor unions in the government field have the right to "act for" their members and to "negotiate agreements", they must be permitted to exercise that right and to enforce agreements in one of the ways in which such rights are customarily enforced, namely, by court litigation. Everything stated by the Supreme Court in *Smith* and by Justice Douglas in *Westinghouse* relative to the right and need for a union to enforce individual rights in private industry in present day society in entirely applicable to conditions in public employment. Since the unions in the public field have identical rights and obligations to act for their individual members as do union in the private field, it would be in accord with the national federal labor policy to grant public unions the same standing to sue on behalf of individuals as is given unions in private industry. The Supreme Court held as it did in *Smith* not because of any language of Section 301 of the LMRA which changed the common law rule upheld in *Westinghouse, supra,* but solely because it deemed the nature and function of unions in current society required a change in the common law rule. Similarly, it can be assumed that in promulgating E. O. 10988, the President intended to confer similar standing on unions in the federal field absent any language in E. O. 10988 to the contrary. The national labor policy which has developed by reason of such enactments as to the Norris-LaGuardia Act, the Labor Management Relations Act, and federal decisions such as *Smith* in the field (See *Textile Workers U. v. Lincoln Mills*, 353 U. S. 448). permits unions the standing sought here. It would be inconsistent and discriminatory to exclude federal employees from this federal policy. The President, in E. O. 10988, has not indicated an intent so to do. The relevant federal labor policy was well established at the time E. O. 10988 was promul-

gated. It cannot be assumed that in establishing the principle of union recognition and collective bargaining in the federal employment field, the President desired to give less standing to unions of government employees than to their counterparts in private industry.

As discussed earlier in this brief, Congress, in enacting the Pay Act of 1965 has indicated a clear intent to equate working conditions and benefits in the federal field with those in private industry. Given this intent, and given the national labor policy permitting non-government unions to sue to protect individual rights, it should now be decided by this Court that this national labor policy is equally applicable to unions of federal employees, particularly in respect to a subject matter which is more procedural than substantive and where the reasons for applying the national labor policy in private industry are equally applicable to application of the rule in the public field.

D. THE CASES CITED BY APPELLEE ARE NOT RELEVANT OR WERE DECIDED PRIOR TO THE ESTABLISHMENT OF THE NATIONAL LABOR POLICY GRANTING UNIONS STANDING TO SUE.

In the court below, the Postmaster argued that *Manhattan-Bronx v. Gronouski,* 121 U. S. at D. C. 321, 350 F. 2d 451, and *NAIRE v. Dillon,* 123 U. S. at D. C. 58, 356 F. 2d 811, foreclosed the Federation from relying on E. O. 10988 to establish a standing to sue. Neither of these cases is relevant to that issue. In neither of these cases was it decided that the government union which was the plaintiff had no standing to sue. Rather, the cases were decided on a question of jurisdiction. This court held in both cases that a federal district court had no jurisdiction to review alleged violations of E. O. 10988, at least where the alleged violations are not of a serious and obvious nature. In *Manhattan-Bronx* the agency had ruled that for a union election to be valid, a minimum of 60%

of the eligible employees must have voted. The plaintiff union sought to challenge the validity of the 60% rule under the Executive Order. In *NAIRE*, the agency had ruled that criminal investigators could not participate in an election conducted under E. O. 10988 and the union there involved sought to challenge that rule. In both cases, the complaint was dismissed not because the plaintiffs had no standing, but because the court deemed that under the Executive Order courts did not have jurisdiction to inquire into the validity of such rules and regulations promulgated thereunder.

The present case, of course, does not involve any alleged violation of E. O. 10988, but rather, a violation of the 1965 Pay Act, and of the collective agreement between the Federation and the Post Office Department. Thus the instant case is entirely distinguishable.

In the court below, the Postmaster also cited four cases holding that unincorporated associations had no standing to protect the individual rights of their members. The cases are: *Moffat Tunnel League v. United States*, 289 U. S. 113, 116-121 (1933); *Rock Drilling, etc., Union, etc. v. Mason and Hanger Co.*, 217 F. 2d 687, 693-694 (2d Cir. 1954), cert. den. 349 U. S. 915 (1955); *Farmers Co-op Oil Co. v. Socony-Vacuum Oil Co.*, 133 F. 2d 893, 896 (2d Cir.); and *Calif. Apparel Creators v. Wieder of Calif.*, 162 F. 2d 893, 896 (2d Cir.), cert. den. 332 U. S. 816 (1947).

In Moffat Tunnel League, the League's right to sue was denied not in terms of lack of power to sue to vindicate individual rights, but rather because, as the Supreme Court stated, "These leagues are not corporations, quasi corporations, or organized pursuant to or recognized by any law. Neither is a person in law, and unless authorized by statute, they have no capacity to sue." *Farmers Co-op Oil, Calif. Apparel Creators*, and *Rock Drilling*,

were all decided prior to the decision of the Supreme Court in *Smith* and were decided on the basis of the same doctrines which the Supreme Court had relied on in *Westinghouse*. We know of no cases decided since *Smith* in which a union, whether its members were in public or private employment, was flatly denied a standing to sue. On the contrary, in *NAACP v. Alabama, supra,* the Supreme Court permitted the NAACP to bring legal proceedings to protect the individual rights of its members. In that connection, the Supreme Court stated:

> "We think that petitioner argues more appropriately the rights of its members, and that its nexus with them is sufficient to permit that it act as their representative before this court . . .
>
> "Petitioner is the appropriate party to assert these rights, because it and its members are in every practical sense identical. The Association which provides in its constitution that '[a]ny person who is in accordance with [its] principles and policies . . .' may become a member, is but the medium through which its individual members seek to make more effective the expression of their own views."

In *Fishgold v. Sullivan Drydock and Repair Corp.*, 328 U. S. 275, a labor union had intervened in a suit brought by a war veteran seeking compensation under the Selective Training and Service Act of 1940, for days he was not allowed to work. The union intervened claiming that the action of the employer in refusing to pay such compensation was warranted by the collective agreement and was not in violation of the Act. In support of its intervention the union contended that a decision in favor of the veteran would adversely affect the right of other individuals under the collective agreement. The court permitted intervention at the trial stage but when the union attempted to appeal it was met with the objection that it had no standing to

appeal. In upholding the union's standing, the Supreme Court stated as follows (328 U. S. at 281):

> We are met at the outset with the claim that the union had no appealable interest in the judgment entered by the District Court and accordingly that the Circuit Court of Appeals lacked jurisdiction to entertain it. It is pointed out that a money judgment was entered only against the corporation and that no relief was granted against the union. It is therefore argued that the judgment did not affect any substantive right of the union and that at most the union had merely an interest in the outcome of litigation which might establish a precedent adverse to it. *Boston Tow Boat Co. v. United States*, 321 U. S. 632, 88 L. ed. 975, 64 S. Ct. 776.
>
> * * * * * * *
>
> But the argument misses the point. The answer of the corporation and the union put in issue the question whether there was a conflict between the collective bargaining agreement and the Act and if so, which one prevailed. The parties to the collective bargaining agreement—the union and the corporation—were before the court. A decision on the merits of petitioner's claim necessarily involved a reconciliation between the Act and the collective bargaining agreement or, if it appeared that they conflicted, an adjudication that one superseded the other. As we have noted, the District Court was of the view that the collective bargaining agreement was not inconsistent with the Act. But, however, the result might be rationalized, a decision for or against petitioner necessarily involved a construction of the collective bargaining agreement.

It is submitted that the Supreme Court's holding in *Fishgold* is analogous and affords strong support for the Federation's position here.

The relief called for in this case is a declaratory judgment as well as injunctive relief. There is involved an issue of broad scope affecting the rights of thousands of employees officially represented by the Federation to enjoy the benefits of an Act of Congress and the protection of their collective agreement. The Federation has been involved in the application of the overtime provisions of the Pay Act of 1965 since its enactment. It is submitted that the Federation is wholly within its rights in suing, as a co-plaintiff, to vindicate the rights of one of its members who, as a result of the appellee's fixed position in Postal Bulletin 20553, was along with numerous fellow employees subjected to both loss of overtime pay and unlawful manipulation of the basic workweek. Not only will the Federation thus be able to fulfill its duties and responsibilities as the exclusive bargaining representative, but a multiplicity of lawsuits will have been prevented.

CONCLUSION.

For twenty years postal employees have waited hopefully to be put on a par with their fellow workers in other departments of the government and with private industry and to achieve a basic workweek with fixed off days so that they too could enjoy planned rest days with their families. Congress, aware of the inequities, cured them with the carefully spelled out amendments in Pub. L. 89-301 which completely redrafted the former law.

Now the defendant would have the Court rewrite Pub. L. 89-301 to permit the Postmaster to maintain the status quo which existed prior to October 29, 1965. To do this the Court would have to read into the statute words which are not there, reject the common and ordinary meaning of the language and totally ignore the legislative history which so clearly shows the purpose of Congress to make postal workweek and overtime practices comparable to at

least the minimum standards for both private and public employment.

For the senior regular annual wage employees to return to the outlawed compensatory time off practice, which inevitably results from the Postmaster's substitution of the word "temporary" for "basic", constitutes a complete frustration of the purpose sought to be achieved and is insupportable by any theory of law. Sections 3571 and 3573 might just as well have never been rewritten.

For the foregoing reasons the decisions of the court below should be reversed.

Respectfully submitted,

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APPENDIX.

APPENDIX A.

§ 3571. Maximum hours of work.

(a) A basic workweek is established for all postal field service employees consisting of five eight-hour days. The work schedule of employees shall be regulated so that the eight hours of service does not extend over a longer period than ten consecutive hours.

(b) The Postmaster General shall establish work schedules in advance for annual rate regular employees consisting of five eight-hour days in each week.

(c) Except for emergencies as determined by the Postmaster General, the hours of service of any employee shall not extend over a longer period than twelve consecutive hours, and no employee may be required to work more than twelve hours in one day.

(d) To the maximum extent practicable, senior regular employees shall be assigned to a basic workweek Monday through Firday, inclusive, except for those who express a preference for another basic workweek.

§ 3573. Compensatory time, overtime, and holidays.

(a) In emergencies or if the needs of the service require, the Postmaster General may require employees to perform overtime work or to work on holidays. Overtime work is any work officially ordered or approved which is performed by—

(1) an annual rate regular employee in excess of his regular work schedule.

(2) an hourly rate regular employee in excess of eight hours in a day or forty hours in a week, and

(3) a substitute employee in excess of forty hours in a week.

The Postmaster General shall determine the day and week used in computing overtime work.

(b) For each hour of overtime work the Postmaster General shall compensate an employee in the "PFS" Schedule as follows:

(1) He shall pay each employee in or below salary level PFS-7 compensation at the rate of 150 per centum of the hourly rate of basic compensation for his level and step computed by dividing the scheduled annual rate of basic compensation by two thousand and eighty.

(2) He shall grant each employee in or above salary level PFS-8 compensatory time equal to the overtime worked, or in his discretion in lieu thereof pay such employee compensation at the rate of 150 per centum of the hourly rate of basic compensation of the employee or of the hourly rate of the basic compensation for the highest step of salary level PFS-7, whichever is the lesser.

(c) For officially ordered or approved time worked on a day referred to as a holiday in the Act of December 26, 1941 (55 Stat. 862; 5 U.S.C. 87b), or on a day designated by Executive order as a holiday for Federal employees, under regulations prescribed by the Postmaster General, an employee in the PFS schedule shall receive extra compensation, in addition to any other compensation provided for by law, as follows:

(1) Each regular employee in or below salary level PFS-7 shall be paid extra compensation at the rate of 100 per centum of the hourly rate of basic compensation for his level and step computed by dividing the scheduled annual rate of basic compensation by two thousand and eighty.

(2) Each regular employee in or above salary level PFS-8 shall be granted compensatory time in an

amount equal to the time worked on such holiday within thirty working days thereafter or, in the discretion of the Postmaster General, in lieu thereof shall be paid extra compensation for the time so worked at the rate of 100 per centum of the hourly rate of basic compensation for his level and step computed by dividing the scheduled annual rate of basic compensation by two thousand and eighty.

(3) For work performed on Christmas Day (A) each regular employee shall be paid extra compensasation at the rate of 150 per centum of the hourly rate of basic compensation for his level and step, computed by dividing the scheduled annual rate of basic compensation by two thousand and eightly, and (B) each substitute employee shall be paid extra compensation at the rate of 50 per centum of the hourly rate of basic compensation for his level and step.

(d) The Postmaster General shall establish conditions for the use of compensatory time earned and the payment of compensation for unused compensatory time.

(e) Each regular employee whose regular work schedule includes an eight-hour period of service any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday shall be paid extra compensation at the rate of 25 per centum of his hourly rate of basic compensation for each hour of work performed during that eight-hour period of service.

(f) If an employee is entitled under this section to unused compensatory time at the time of his death, the Postmaster General shall pay at the rate prescribed in this section, but not less than a sum equal to the employee's hourly basic compensation, for each hour of such unused compensatory time to the person or persons surviving at the date of such employee's death. Such payment shall be made in the order of precedence prescribed in the first

section of the Act of August 3, 1950 (5 U.S.C. 61f), and shall be a bar to recovery by any other persons of amounts so paid.

(g) Notwithstanding any provision of this section other than subsection (f), no employee shall be paid overtime or extra compensation for a pay period which when added to his basic compensation for the pay period exceeds one twenty-sixth of the annual rate of basic compensation for the highest step of salary level PFS-17.

(h) For the purposes of this section and section 3571 of this title—

(1) "Annual rate regular employee" means an employee for whom the Postmaster General has established a regular work schedule consisting of five eight-hour days in accordance with section 3571 of this title.

(2) "Hourly rate regular employee" means an employee for whom the Postmaster General has established a regular work schedule consisting of not more than forty hours a week.

(3) "Substitute employee" means an employee for whom the Postmaster General has not established a regular work schedule.

* * * * * * *

NOTE: By amendment Section 404 (d) of Pub. L. 89-504, approved July 18, 1966, 80 Stat. 297, amended Subsection (b) and (c) of Section 3573 of Title 39 U.S.C. by striking out "Level PFS-7" and "Level PFS-8" wherever appearing therein and inserting in lieu thereof "Level PFS-10" and "Level PFS-11" respectively.

BRIEF OF APPELLEE

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,685

UNITED FEDERATION OF POSTAL CLERKS, AFL-CIO,

and

DOUGLAS E. GROETTUM,

Appellants,

v.

W. MARVIN WATSON, Postmaster General
of the United States,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

United States Court of
for the District of Columbia Circuit

FILED MAY 29 1968

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

I. Whether the temporary change of appellant Groettum's basic workweek assignment in June, 1966, was within the lawful discretionary authority of the Postmaster General.

II. Whether an organization which has been recognized as the exclusive representative of certain governmental employees has the requisite standing to maintain a representative action against the head of a federal department in their behalf.

I N D E X

CITATIONS

Cases:

* Cases or authorities chiefly relied upon are marked by asterisks.

Cases-continued: Page

Statutes:

* Cases or authorities chiefly relied upon are marked by asterisks.

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IN THE UNITED STATES COURT OF APPEALS
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ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

BRIEF OF APPELLEE

COUNTERSTATEMENT OF THE CASE

This is an action brought by Douglas E. Groettum, an annual rate regular postal employee at Minneapolis, Minnesota (J.A. 4) and the United Federation of Postal Clerks, AFL-CIO [Federation], challenging the implementation by the Post Office Department of Section 5 of the Federal Employees Salary Act of 1965, P.L. 89-301, 79 Stat. 1111, amending 39 U.S.C. 3571 and 3573. The background of the litigation may be summarized as follows:

1. Work schedules of annual rate regular postal employees are subject to the provisions of 39 U.S.C. 3571 and 3573. Prior

to the amendment of these sections in 1965, each annual rate regular employee was considered to have a Monday through Friday workweek. He could, however, be compelled to work on a Saturday or a Sunday provided that he was granted, within five days thereafter, compensatory time for the extra work performed. For such work performed in December, the Postmaster General could, in lieu of providing compensatory time, authorize payment of overtime compensation. 39 U.S.C. 3573(2)(A)(1964 ed.).

By virtue of Section 5 of the 1965 Act, these sections were amended to eliminate the concept of a fixed Monday-Friday workweek for all annual rate regular employees. Instead the Postmaster General has been granted specific statutory authority to "establish work schedules in advance for annual rate regular employees consisting of five eight-hour days in each week" 39 U.S.C. 3571(b) (1964 ed. Supp. II). Additionally, with respect to employees in grade PFS-10 or below, under the amended Section 3573 work performed outside of the employee's assigned workweek must be compensated by overtime pay. 39 U.S.C. 3573(a)(1) (1964 ed. Supp. II). This is in contrast to the previous scheme under which, as just noted, only compensatory time off was permitted for such work (except in December when overtime pay could be given).

2. In implementation of sections 3571 and 3573, as thus amended in 1965, the Postmaster General established a seven day week, known as a "service week", running from 12:01 A.M. Saturday to 12 midnight the following Friday (J.A. 51). The service weeks in June, 1966 (the month in which the present controversy arose) were as follows:

Service Week No.	SAT	SUN	MON	TUE	WED	THURS	FRI
1	4	5	6	7	8	9	10
2	11	12	13	14	15	16	17
3	18	19	20	21	22	23	24
4	25	26	27	28	29	30	

At the time the actions complained of were taken, there were three types of basic workweeks,[1/] each consisting of five 8-hour days within the 7-day service week (J.A. 45). These basic workweek assignments were:

(1) those which began on Monday and ran through Friday, with Saturday and Sunday as fixed days off,

(2) those which began on Saturday with Sunday and Monday as fixed days off, and

(3) those which began on Saturday (except those in (2) above) or on Sunday with 2 fixed or rotating days off within the service week (J.A. 45).

3. Pursuant to various seniority provisions (J.A. 42-47), appellant Groettum successfully bid for, and was assigned, basic workweek number 1 as his normal basic workweek assignment (J.A. 10). He worked this Monday through Friday tour without incident until Thursday June 16, 1966 when, in accord with the then established practice respecting the giving of advance notice of a temporary change in an assigned basic workweek,[2/] he was informed that, in the service week commencing Saturday June 18, due to a

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1/ This was subsequently expanded to an all inclusive catalogue, listing five types of basic workweeks (J.A. 27).

2/ At a later date, the Postmaster General revised the policy in this regard to require notice of a temporary change in an assigned basic workweek to be given no later than the preceding Wednesday (J.A. 57).

temporary shortage of personnel (J.A. 121-122) he would be required to work basic workweek number 3, with Monday June 20, and Friday June 24, as days off (J.A. 62). During the June 18 service week he worked on that schedule. At the end of the week, he reverted to his normal Monday through Friday basic workweek which has been maintained ever since (J.A. 63). It should be noted that, although Groettum worked on Saturday June 18 and Sunday June 19,[3/] he only worked five days in each of the four service weeks that month.

On June 21, 1966 a grievance on behalf of Groettum was submitted to the Postmaster of Minneapolis, Minnesota, complaining of the temporary reassignment from basic workweek number 1 to workweek number 3. (J.A. 130-132). The grievance was denied, (J.A. 129-130) and an appeal was taken to the Regional Director, Minneopolis Postal Region (J.A. 123), which was denied (J.A. 121). A further appeal was taken to the Board of Appeals and Review in Washington (J.A. 116), which was also denied. (J.A. 114).

On March 10, 1967 (J.A. 1) appellants brought this suit for a declaratory judgment and ancilliary injunctive relief against the Postmaster General of the United States, seeking a determination that 39 U.S.C. 3571, 3573 (1964 ed. Supp. II) prohibit temporary changes in basic workweek assignments (J.A. 13-14). The Postmaster General moved to dismiss as to the Federation on the ground that the union, not a real party in interest, lacked the requisite standing to sue (J.A. 20). As to the claim asserted by

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3/ For this Sunday work Groettum was paid 25% extra compensation as required by 39 U.S.C. 3573(e) (1964 ed. Supp. II).

Groettum,[4] the Postmaster General moved for summary judgment (J.A. 19-20). These motions were granted and by a judgment filed January 29, 1968, the district court, per Sirica, J. dismissed the action (J.A. 135). Appellants then timely filed a notice of appeal (J.A. 136).

STATUTES INVOLVED

39 U.S.C. 3571, 3573 (1964 ed. Supp. II):

§ 3571. Maximum hours of work.

(a) A basic workweek is established for all postal field service employees consisting of five eight-hour days. The work schedule of employees shall be regulated so that the eight hours of service does not extend over a longer period than ten consecutive hours.

(b) The Postmaster General shall establish work schedules in advance for annual rate regular employees consisting of five eight-hour days in each week.

(c) Except for emergencies as determined by the Postmaster General, the hours of service of any employee shall not extend over a longer period than twelve consecutive hours, and no employee may be required to work more than twelve hours in one day.

(d) To the maximum extent practicable, senior regular employees shall be assigned to a basic workweek Monday through Friday, inclusive, except for those who express a preference for another basic workweek.

§ 3573. Compensatory time, overtime, and holidays.

(a) In emergencies or if the needs of the service require, the Postmaster General may require employees to perform overtime work or to work on holidays. Overtime work is any work officially ordered or approved which is performed by --

(1) an annual rate regular employee in excess of his regular work schedule,

(2) an hourly rate regular employee in excess of eight hours in a day or forty hours in a week, and

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4/ The class action aspects of the case were dismissed by agreement of the parties (App. Br., p. 5).

(3) a substitute employee in excess of forty hours in a week.

The Postmaster General shall determine the day and week used in computing overtime work. * * *

SUMMARY OF ARGUMENT

I

In temporarily assigning appellant Groettum to a basic workweek other than the one to which he was regularly scheduled, the Postmaster General was acting within the authority conferred upon him by 39 U.S.C. 3571, as amended by Section 5 of the Federal Employees Salary Act of 1965. Under that section, the Postmaster General may, should he deem it necessary for the efficient operation of the postal service, temporarily reassign a regular postal employee to a different basic workweek, if, as here, the employee is given advance notice of the reassignment. Consequently, this action is an attempt to control the Postmaster General's exercise of discretion in the operation of his department and is thus an unconsented suit against the United States. Dugan v. Rank, 372 U.S. 609; Mitchell v. McNamara, 122 U.S. App. D.C. 224, 352 F. 2d 700; Manhattan-Bronx Postal Union v. Gronouski, 121 U.S. App. D.C. 321, 350 F. 2d 451, certiorari denied, 382 U.S. 978; United States ex rel Brookfield Construction Co. v. Stewart, 119 U.S. App. D.C. 254, 339 F. 2d 753; State of Arizona v. Hobby, 94 U.S. App. D.C. 170, 221 F. 2d 498.

II

Appellant Federation lacks the requisite standing to maintain this action on behalf of its members. It is not a member of the class it seeks to represent and seeks to enforce no substantive

legal right of its own. Rock Drilling, etc. v. Mason Hanger Co., 217 F. 2d 687 (C.A. 2), affirming 90 F. Supp. 539 (S.D. N.Y.), certiorari denied, 349 U.S. 915. Furthermore E.O. 10988 does not give appellant any litigable interest in the issues here involved and thus does not confer standing.

ARGUMENT

I

THE TEMPORARY RESCHEDULING OF A REGULAR ANNUAL EMPLOYEE'S BASIC WORKWEEK ASSIGNMENT IS WITHIN THE SCOPE OF THE POSTMASTER GENERAL'S STATUTORY AUTHORITY AND THEREFORE THIS IS AN UNCONSENTED SUIT AGAINST THE UNITED STATES.

By this action, appellants seek to restrain the Postmaster General from effecting temporary changes in the basic workweek of annual rate regular postal employees, such as appellant Groettum, without the payment of overtime compensation. As above seen, what prompted the suit was a determination of the postal authorities that, during one service week in June 1966, the efficient operation of the post office at Minneapolis required that Groettum's basic 5 day workweek consist of Saturday, Sunday and Tuesday through Thursday -- rather than Monday through Friday. According to appellants, they are entitled to obtain a judicial declaration that the Postmaster General does not enjoy this flexibility in the utilization of his personnel -- that once an employee is assigned to a specific basic 5 day workweek, he may not be assigned -- even temporarily -- to a different basic 5 day workweek. The Postmaster General's hands should be tied in this respect, this Court is told, without regard to the particular needs of the postal service at a particular location or time.

As justification for their endeavor to have this Court restrict the Postmaster General's assignment of postal employees to tours of duty, appellants point to Section 5 of the Federal Employees Salary Act of 1965, amending 39 U.S.C. 3571 and 3573. It is clear, however, from both the terms and legislative history of Section 5 that it was not intended to deprive the Postmaster General of authority to change temporarily basic 5 day workweeks when, in his judgment, such a change was necessitated by existing operational conditions. Thus, what appellants are really attempting to do is not to restrain unauthorized actions of a government official but, rather, to control the exercise of the discretion which that official has been given in the administration of his department. Viewed in its proper light, this is, therefore, an unconsented suit against the United States.

1(a). Turning first to the terms of 39 U.S.C. 3571, as amended, it is readily apparent that there is nothing therein which precludes the Postmaster General from making a temporary change in the basic workweek of a postal field service employee. To the contrary, it is plain that the Postmaster General fully complied with the statutory mandate in appellant Groettum's case.

Section 3571 establishes the concept of a basic workweek of five eight-hour days, not to involve more than ten consecutive hours of service, and directs the Postmaster General to prescribe work schedules <u>in advance</u> consisting of five eight-hour days in each week. To "the maximum extent possible", senior regular employees are to be assigned, if they so desire, to a Monday through Friday basic workweek.

In short, in making assignments of particular employees to one of the three basic workweeks which he prescribed in implementation of the basic legislative directive, the Postmaster General is subject to only two requirements: (1) the assignment has to be made "in advance"; and (2) senior employees (such as Groettum) have to be given their preference to the maximum extent practicable. Both of these requirements were indisputably met here: Groettum's preference for the Monday through Friday basic workweek has been honored to the "maximum extent practicable" and, for the one week in which it was not feasible to recognize that preference, the postal authorities established, in advance, a different work schedule which also consisted of five eight-hour days in the particular service week involved.

In the final analysis, then, appellants' contention that the Postmaster General exceeded his authority is premised upon the existence of a restriction which Congress did not impose in the statute. And there is, we submit, no good reason why this Court should be asked to rewrite Section 3571 to have it impose such an additional limitation. Had Congress intended absolutely to foreclose the Postmaster General from reassigning an employee from one basic 5 day workweek to another to meet the needs of the postal service, it both would and could have expressed that intent in unmistakable language. That it did not do so requires the conclusion that, while affording the employee the rights spelled out specifically in the statute, it saw no compelling justification for impeding the efficient operation of the postal service by adopting appellants' theory that an employee should have the right,

in perpetuity, of serving the basic workweek to which he was initially assigned.

(b) The legislative history of the 1965 amendment confirms that appellants are seeking to engraft on Section 3571 limitations which Congress neither provided nor intended. Nowhere in that history is there the slightest suggestion of a legislative objective to prevent the Postmaster General from reassigning an employee on a temporary basis to a different basic workweek. To the contrary, the principal concern was with respect to insuring that the amendment to Section 3571 would not unduly restrict the Postmaster General's ability to establish five day work schedules in accordance with the needs of the postal service.

For example, as it initially passed the House, H.R. 10281 (which eventually became the Federal Employees Salary Act of 1965) would have amended Section 3571 to read, inter alia:

> A basic workweek is established for all postal service employees, consisting of five eight-hour days excluding Saturday and Sunday. To provide service on days on other than those included in the basic workweek, the Postmaster General shall establish work schedules in advance for annual rate regular employees consisting of five eight-hour days in each week. To the maximum extent possible, senior annual rate regular employees shall be assigned to the basic workweek, except for any such senior annual rate regular employee who expresses a preference for a workweek other than the basic workweek. [Emphasis supplied]

House Report No. 792, p. 40, 89th Congress, 1st Sess. Although, in this form, H.R. 10281 gave the Postmaster General authority to "establish work schedules in advance" so as to provide for the necessary weekend service (as does the enacted legislation) the underlined statutory language limiting the basic workweek to a

Monday through Friday tour was deemed to be too restrictive and was deleted by the Senate. The reasons for this deletion were summarized in the report of the Senate Post Office and Civil Service Committee:

> The committee has given careful consideration to the problem of scheduling employees for work in the postal field service. As referred, H.R. 10281 gave substantial preference to annual rate regular employees by establishing a basic workweek exclusive of Saturday and Sunday. The committee amendment has modified this in view of its belief that one of the most important factors to be considered is the Post Office Department's obligation to deliver the mail.
>
> Restrictions upon management, in a public service which must utilize its best and most experienced personnel for maximum efficiency and service, will result in poor service to the American public and a poor image for the postal service and all of its employees. Nonetheless, the committee recognizes and strongly supports the rights of employees and the policy established by Executive Order 10988. Therefore, although the Postmaster General shall have no statutory restriction upon scheduling employees to any 5-day workweek the committee has encouraged the Department to give preference, to the maximum extent practicable, to senior regular employees for a basic workweek of Monday through Friday. [Emphasis supplied]

Senate Report No. 910, 89th Cong., 1st Sess. (J.A. 107).

As the result of the deletion, the Postmaster General is called upon by Section 3571 to assign senior employees to work a Monday through Friday week to "the maximum extent practicable", but is free to schedule, in advance, employees to any five day workweek. This is in accord with the recommendations made by the Post Office Department at the hearings before the Senate Committee:

> We believe that a scheduled workweek should be reserved only for regular annual rate employees and that there should be latitude to schedule the workweek for annual rate regulars of 40 hours over any 5 days in the calendar week. Actually, this is the way post offices now employ their personnel. It is not our intention to change schedules for the sake of change, but only to recognize the in fact operational situation. (J.A. 94).

When H.R. 10281 reached the Senate floor, Senator Javits expressed concern that "section 3571(b), which vests in the Postmaster General the power to establish work schedules in advance for annual rate regular employees consisting of five 8-hour days in each week * * * would result in the Postmaster General, possibly in his own judgment - whatever that might be - imposing upon regular employees work on Sunday" -- i.e., precisely the complaint which appellants make in this Court. Senator Monroney, the floor manager of the bill, responded that:

> It was impossible, as we had hearings and studied the situation, to make Saturdays and Sundays volunteer days on which only those regular clerks who would offer to serve on those two important days would work. It is true that only a small crew works on those days, but their work is so important to the efficient movement of the mail on a 7-day basis that, if we left the Post Office Department without the right to assign, on an equitable basis, some regulars to work with the substitutes, we could not guarantee the regular movement of the mail. 111 Cong. Rec. p. 28156, 89th Cong. 1st Sess.

In short, the Senate was explicitly informed that, under the amendment as revised by the Senate Committee, the Postmaster General could take precisely the action which is asserted by appellants to be beyond his authority. The objections of Senator Javits were not accepted, however, and, in the words of the Committee, the bill

as enacted contains "no statutory restriction on scheduling employees to any 5-day workweek" Sen. Rep. 910 quoted, supra p. 11, (J.A. 107).

(c) It is also significant that, after the 1965 legislation the question of temporary rescheduling became the subject of negotiations between the Post Office Department and the appellant Federation. These negotiations resulted in a letter dated August 5, 1966 to E. C. Hallbeck, President of appellant Federation, from former Postmaster General O'Brien, wherein it was recognized that the "impasse [in the negotiations] concerning temporary changes in basic work schedules is a perplexing one". He stated that "the Department must perform its primary purpose - moving the mail - as efficiently as possible within the budgetary and legal restrictions" and that "[s]ometimes, these considerations can't be met without temporary changes." (J.A. 60). He thus decided that:

> Temporary changes in hours and days of work shall not be made unless service needs at an installation preclude adherence to regular work schedules; such temporary changes will be held to a minimum. Employees shall be given as much advance notice as possible of temporary work schedules, but in no case shall they be notified later than the end of their tours of duty preceding Wednesday. If notified after Wednesday, employees required to work outside their regular schedules shall be compensated at the overtime rate if permitted by law. Temporary changes shall be reviewed each week. If a temporary change continues beyond two consecutive weeks the exclusive organization may consult with the installation head to ascertain the reasons and expected duration. (J.A. 61).

This decision by the Postmaster General was ratified by the appellant Federation in an agreement between the Post Office

Department and seven postal unions dated August 31, 1966 and effective September 24, 1966 wherein it was recognized that "[n]ormally the successful bidder [on a basic workweek assignment] shall work the duty assignment as posted." (J.A. 34) [Emphasis supplied].

Thus, notwithstanding its present insistence that Groettum's basic workweek was not subject to change, more than six months before this suit was brought the Federation plainly manifested its understanding that the Postmaster General could make at least a temporary alteration in duty assignments. As we have seen, that understanding -- and not appellants' current contentions -- accords with the terms and purpose of Section 3571.

2. It follows from the foregoing that appellants seek not to restrain unauthorized actions but, rather, to control the exercise of the Postmaster General's discretion in assigning personnel. Thus, while appellants have framed their complaint in the form of an action seeking declaratory and injunctive relief against the Postmaster General, what is actually involved is an unconsented suit against the United States.

As the Supreme Court pointed out in Dugan v. Rank, 372 U.S. 609, 620, "[t]he general rule is that a suit is against the sovereign if 'the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration,' Land v. Dollar, 330 U.S. 731, 738 (1947), or if the effect of the judgment would be 'to restrain the Government from acting, or to compel it to act'. Larson v. Domestic & Foreign Corp., [337 U.S.] at 704; Ex parte New York, 256 U.S. 490, 502 (1921)". This action plainly meets that test. The judgment appellants seek would

plainly "interfere with the public administration" by restraining the Postmaster General from taking action within his statutory authority. Thus the district court lacked jurisdiction over the suit.[5] Dugan v. Rank, supra, pp. 621-622; Mitchell v. McNamara, 122 U.S. App. D.C. 224, 352 F. 2d 700;[6] Manhattan-Bronx Postal Union v. Gronouski, 121 U.S. App. D.C. 321, 350 F. 2d 451, certiorari denied, 382 U.S. 978; United States ex rel. Brookfield Construction Co. v. Stewart, 119 U.S. App. D.C. 254, 339 F. 2d 753; State of Arizona v. Hobby, 94 U.S. App. D.C. 170, 221 F. 2d 498. Cf. Leber v. Canal Zone Cent. L.U., 383 F. 2d 110, 116 (C.A. 5).

II

THE DISTRICT COURT CORRECTLY DECIDED THAT APPELLANT FEDERATION MAY NOT MAINTAIN THIS ACTION ON BEHALF OF ITS MEMBERS.

Appellant Federation's suit in behalf of its members was subject to dismissal on the additional ground that it does not satisfy the two interrelated requirements for the maintenance of such a suit: (1) it is not a member of the class it seeks to

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5/ Appellants seek to base jurisdiction upon 28 U.S.C. 2201, 2202 [Appellants' Brief, p. 1] but "the Declaratory Judgment Act is not an independent source of federal jurisdiction, Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671" Schilling v. Rogers, 363 U.S. 666, 677; Continental Bank and Trust Co. v. Martin, 112 U.S. App. D.C. 354, 303 F. 2d 214, and is not a consent to sue the United States. Although the district court assumed jurisdiction by granting defendants' motion for summary judgment with respect to appellant Groettum's claim this Court may, of course, review the district court's jurisdiction. Mellos v. Brownell, 102 U.S. App. D.C. 67, 250 F. 2d 35.

6/ The Mitchell case, especially relevant here, was a suit in the nature of mandamus brought by teachers employed at overseas United States schools for servicemen's dependents seeking "compliance" with the Defense Department Overseas Teachers Pay and Personnel Practices Act, 73 Stat. 213, 5 U.S.C. 2351, 2358 allegedly mandating periodic salary increases. The action, described as one of those "confused and difficult" situations where "the courts will not interfere with the exercise of executive discretion" was dismissed as an unconsented suit against the United States. 122 U.S. App. D.C. at p. 225, 352 F. 2d at p. 701.

represent as required by Rule 23, Federal Rules of Civil Procedure and, (2) it is not the real party in interest as required by Rule 17.[7] Rock Drilling, etc. v. Mason & Hanger Co., 217 F. 2d 687 (C.A. 2), affirming 90 F. Supp. 539 (S.D.N.Y.), certiorari denied, 349 U.S. 915.

Appellant Federation seeks to enforce no substantive legal rights of its own.[8] Its right to operate as a union of governmental employees "exists only by express leave of the President, Exec. Order No. 10988, 27 Fed. Reg. 551 (1962)" Amell v. United States, 384 U.S. 158, 161. And while a union recognized pursuant to the executive order may negotiate and bargain, it may not maintain legal actions on their behalf.[9] Furthermore as E.O. 10988 does not give unions the right to sue even though alleging injury qua unions Manhattan-Bronx Postal Union v. Gronouski, 121 U.S. App. D.C. 321; 350 F. 2d 451, certiorari denied, 382 U.S. 978; National Assn of Int. Rev. Employees v. Dillon, 123 U.S. App. D.C. 58, 356 F. 2d 811, a fortiori it does not confer standing to maintain this suit.[10]

7/ "The plaintiff or defendant representative must be a member of the class which he purportedly represents. * * * Even without this provision, the real party in interest rule would require the same holding in many cases." 3A Moore's Federal Practice ¶ 23.04, p. 3419 (2d Ed.).

8/ As did, for example, the National Association for the Advancement of Colored People in N.A.A.C.P. v. Alabama, 357 U.S. 449.

9/ As recently stated by one district court: "Any representative capacity which [the organization] may enjoy in the administrative process does not relieve it from the requirement of Rule 23, F.R. Civ.P., that the representative of a class in the federal courts must be a member of that class." Congress of Racial E. v. Comm'r, Soc. Sec. Admin., 270 F. Supp. 537, 543 (D. Md.).

10/ Executive Order 10988, in setting forth the obligation of Federal Agencies vis a vis an organization which has been recognized (continued on next page)

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the district court dismissing this action be affirmed.

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10/ (Continued)
as the exclusive representative, specifically states that "such obligation shall not be construed to extend to such areas of discretion and policy as * * * the assignment of its personnel * * *." § 6(b), 27 F.R. at p. 554.

REPLY BRIEF OF APPELLANTS

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 21,685

UNITED FEDERATION OF POSTAL CLERKS, AFL-CIO

and

DOUGLAS E. GROETTUM,

Appellants,

vs.

W. MARVIN WATSON, Postmaster General
of the United States,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED JUN 12 1968

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED FEDERATION OF POSTAL CLERKS, AFL-CIO, and DOUGLAS E. GROETTUM, Appellants,	:	
vs.	:	NO. 21,685
W. MARVIN WATSON, Postmaster General of the United States, Appellee.	:	

REPLY BRIEF OF APPELLANTS

Most of the arguments advanced by the appellee have been anticipated and covered in appellants' brief, However, a reply is necessary for the purpose of answering the issue of jurisdiction in the district court now being raised for the first time and for the purpose of correcting certain misstatements of law and fact.

I.

The District Court Had Jurisdiction Under The Overwhelming Weight Of Judicial Authority.

Appellee, neither in his Answer nor in any of the various briefs filed in the proceedings below, raised the question of jurisdiction. Appellee assumed, and quite properly so, in the lower court that the court had jurisdiction. This is, of course, in line with the great weight of judi-

cial authority. Appellant's claim is not based upon the theory that the appellee had discretion to decide whether or not to pay overtime where required under the statute. Instead, it is the theory of the appellants that the statute sets forth a clear formula of action to be taken by the appellee and that the appellee did not act in accord with the statutory instruction.

It has long been settled that, where administrative officials act "beyond their statutory powers", the courts may review and relieve a petitioner who is injured thereby. U.S. v. Gates, 148 U.S. 134;[1/] Dugan v. Rank, 372 U.S. 609, at 621, 10 L. ed 15, at 24, 83 S. Ct. 999. In Gates the Court reviewed and gave relief to a postal employee who was denied statutory daily overtime because of an unlawful interpretation by the Postmaster General in an attempt to avoid the clear directive of the statute. The courts have always, in the absence of statutory prohibition, had the power to determine a petitioner's rights created by statute. Dismuke v. U.S., 297 U.S. 167, 56 S.Ct. 400, 80 L.ed 561; School of Magnetic Healing v. McAnnulty [Postmaster], 187 U.S. 94, 23 S.Ct. 33, 47 L.ed 90. Even in situations where an administrative official is exercising discretion specifically given to him by Congress he may not depart from the clear meaning of the statutory language to

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1/ In the Index of cases and on Page 9 of Appellants' main brief the citation, U.S. v. Gates is given as 184 U.S. 134 whereas it should be 148 U.S. 134.

arrive at a result other than that intended by the legislature. Addison v. Holly Hill Fruit Products, Inc., 322 U.S. 607, 617, 618, 88 L.ed 1488, 1496.

II.

Correction of Misstatements of Law And Fact

Appellee has chosen to completely ignore the purposes of the legislation as revealed not only by its language but by its legislative history including the statements of its purposes given by the former Postmaster General and others. He also refuses to meet the clear cut issue raised by the fact that the official Post Office Department policy -- the application of which in the Groettum case was chosen as a prime example -- constitutes a return to the use of compensatory time off, a practice which Congress specifically eliminated. Instead appellee simply states repeatedly that the comprehensive amendments contained in 39 U.S.C. 3571 and 3573 places no restraint on the Postmaster to make assignments on an ad hoc basis. Appellee's theory carried to its logical conclusion is that he can change the established workweek fifty-two times a year and thus perpetually avoid paying overtime. Appellants in paragraphs below correct these and other legal errors and misstatements of fact.

A.

The appellee does not accurately reflect the position

of the appellants where he states at the bottom on page 9 and top of page 10 of his brief that it is appellants' theory that an employee should have the right, in perpetuity, of serving the basic workweek to which he was initially assigned. Appellants have not put forward such a "theory" but, on the contrary, recognize that circumstances may require "establishing" new "basic workweeks" through a system of posting and bidding under the collective bargaining contract (JA 29 Posting) and the bidding procedures set forth in Postal Bulletin 20520 (JA 42 - 47).[2/]

The repeated assertions of the appellee that he is prevented by the appellants' position from moving the mails is not supported. Whatever handicap exists, if any there be, comes from the requirement by Congress of overtime premium pay for working employees on their days off. By appellee's admission he has determined three types of regular basic workweeks (appellee's brief p. 3 and see JA 45-47) to which the annual rate employees are assigned. Occasionally or temporarily the needs of the service oblige him to have additional employees come in and work on days which for the employee called in would be an off day. When this occurs appellee has ample means for adjusting. Appellee can either use substitutes or hourly rate regulars or he can pay overtime to annual rate employees. In the latter case he is in no way different from

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2/ See Appellants' Brief, page 41.

any employer who is required to pay a premium when overtime is worked. These reasonable alternatives are within the law, are required by law, and certainly do not "deprive" the Postmaster General of authority to make temporary off schedule work assignments when his operations require it, and the law most certainly does not obstruct the moving of the mail, unless it can be asserted that the payment of overtime or the hiring of substitutes constitutes "obstruction".

B.

Appellee's piecemeal reference to the legislative history does not accurately reflect the intention of Congress. The interpretation of appellee carried to its logical conclusion would result in the postal employees ending up with less overtime protection than the statute provided prior to the amendments.

The fact that Congress rejected a proposed legislative formula which would specifically name Saturday and Sunday as days off made no significant change in the requirement established in the statute as finally drawn that employees be paid time and one-half for working outside of schedule (whether the off days were Saturday and Sunday or any other combination of two off days) and that the old practice of compensatory time off be abolished. The legislative history, considered as a whole, does not indicate that at any time Congress abandoned its clearly stated purpose to modernize the overtime practices

in the Post Office Department and to bring them into line with practices followed in other industries, both private and public. The mere fact that Congress permits the Postmaster to establish basic workweeks which may include a Saturday or Sunday, or both, cannot by any stretch of statutory interpretation form the basis for special discretionary powers permitting the evasion or avoidance of the overtime provisions whenever an employee is required to work outside of his established workweek.

Appellee has quoted on page 12 of his brief from a colloquy between Senator Javits and Senator Monroney, manager of the bill. The quotation is offered in support of appellee's theory but it is obvious from the words used by Senator Monroney that he was merely explaining that it had not been possible to exclude Saturday and Sunday per se as work days without exception. The exchange of comments does not modify the overtime requirement. If appellee had followed the colloquy through to the end on the next page he would have discovered that Senator Javits was concerned primarily in the Monday through Friday preference to be given to the senior regular employees in the choice of workweek assignments and not in avoiding overtime. As a matter of fact it was assumed that overtime would be paid and would be a deterrent. Thus Senator Monroney replied to a question from Senator Javits, as to whether the weekend work would be reduced:

> "MR. MONRONEY: Perhaps a little less, because of the overtime provisions. The overtime provision will be expensive. I would think such work as has been done on nonpriority mail on Saturdays and Sundays would be largely dispensed with because of the higher costs in handling it."

Where, as in the Post Office the service week begins on Saturday, overtime for Saturday and Sunday work would come about only from employees working outside of a regularly established basic workweek which did not include Saturday and/or Sunday.

C.

Appellee's repeated statements that the statute provides the Postmaster General the power to depart temporarily from regularly scheduled basic workweeks whenever he deems it necessary for efficient operation of the post office without payment of overtime is not supported by any legislative history or statutory language. The legislation consists of an integrated package of amendments now codified 39 U.S.C. 3571 and 3573. Section 3571, although labeled an amendment, is entirely new, and the word "emergency" appears only in subsection (c) thereof and is confined to permitting the Postmaster General to extend consecutive working hours beyond 12 and has no relation to the issues in this case. The only other references to the exercise of discretion by the appellee is found in the overtime provisions of Section 3573 which permits the Postmaster General to work employees overtime if he pays a premium rate. We reiterate that a determination of the cor-

rect meaning and application of the amendments requires an examination of all of the language of the amendments and all of the legislative history.

D.

Perhaps the best example of appellee's efforts to put together a position based upon miniscule portions of the record is the attempt to establish that the Federation is in agreement with his position that the Postmaster may proceed from week to week to make changes which would justify his failure to pay overtime. Thus, on pages 13 and 14 appellee makes reference to clause 4 of Section E of Article XXII of the Agreement between the Federation and the appellee, (JA 29 at 34) which reads:

> "4. Normally the successful bidder shall work the duty assignment as posted."

That appellee is confined throughout his brief to "clutching at straws" is no better demonstrated than in his presentation of this one sentence out of context. This single sentence, when read together with the context, particularly D. 1. (JA 32),[3/] could have no other meaning than that the

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3/ This portion reads as follows:
"D. Information on Notices.

Information shall be as shown below and shall be specifically stated:

1. The duty assignment by position title and number e.g. key, standard or individual position)."

successful bidder will normally be required to perform the duties that make up the particular assignment on which he bid. There is nothing, considering its place in the agreement, its language, the practices reflected in the record to suggest in any way that this sentence constitutes an agreement to permit the Postmaster to work employees on off days without overtime compensation.

E.

As we have stated before, the appellee makes no effort to come to grips either with the facts or law set forth in appellants' main brief and this is equally true of his arguments with relation to the right of the Federation to maintain this action on behalf of its members. The cases cited by appellee are distinguishable and have been distinguished in appellants' earlier brief. None of them in any way detracts from application of the principle of Smith v. Evening News Assn., 371 U.S. 195, 9 L.ed 2d 246. However, applicants feel it necessary to call the Court's attention to the gross misstatement of fact on page 16 of the appellee's brief. Contrary to appellee's assertion that the Federation exists only by express leave of the President, the truth is that the Federation has existed for some sixty years. Executive Order 10988 only strengthens and supports the existence of the union and spells out the obligations of the government in relation to the union.

CONCLUSION

For the foregoing reasons, in addition to appellants' initial brief, it is respectfully submitted that the decision of the court below should be reversed.

Respectfully submitted,

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